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SOCIAL JUSTICE REVIEW:

**A Review of Client Services for Vulnerable Peoples in the
Ontario Ministry of the Attorney General**

FINAL REPORT

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SOCIAL JUSTICE REVIEW

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For the Office of the Official Guardian, the findings suggest that service levels, while relatively high, are subject to inconsistencies in application. The recommended option involves an enhanced status quo, in which training, policy statements, and clarity about the role of the Office would be strengthened and sharpened. This option is consistent with the growing recognition of the special rights of children and with other policy changes underway in Ontario and Canada. At the same time, administrative economies of scale can be sought through coordination with the Office of the Public Trustee in the management of children's estates.

For the Office of the Public Trustee, the findings suggest that service delays, unresponsiveness, and lack of information, as well as difficult working conditions, leave major room for improvements. The recommended option, which can be implemented with or without the proclamation of the Substitute Decisions Act, involves an enhanced service model with local delivery, which focuses the mandate of the program, creates new administrative regimes, and facilitates decisions at delegated levels closer to the client.

For the expected Office of the Public Guardian and Trustee, the recommended option involves a coordinated and linked set of centralized services with single stop shopping at the local level through personal contact with an agent of the guardian. The model builds on a holistic vision of the individual client's needs, while still providing protection against conflicts of interest. Most importantly, it puts into place a community-based outreach and public education model to convey the implications of the Substitute Decisions Act and the range of alternatives open to clients. In this way, it attempts to ensure that guardianship remains truly a last resort.

The Review Team examined options related to the positioning of these programs in the Ministry. The findings suggest that better client service across these programs can be developed by positioning these programs together in a new Division focused on Community Operations. This option offers the potential for greater clarity and consistency in a client-focused service vision; economies of scale related to overhead, training, policy development, and technology; coordination to other ministries, other governments, and to the community in the service of consistent and high quality referral; and opportunities for public education.

The report also examines issues surrounding internal and external accountability as they affect these programs. In addition to enhanced mechanisms for review and achievement within programs, within government and the electoral process, it examines the demand for more empowering and participatory public accountability and its implications on these programs.

Finally, an implementation plan is presented with a suggested timetable for action.

Acknowledgements

The project could not have been completed without the insights of many members of the Ministry and of the community. The Review Team would like to thank everyone who gave their valuable time in the interests of better client services. No individual clients or program staff are identified in the report for reasons of confidentiality. Nevertheless, we want to especially thank them for their help. Representatives of community organizations who contributed through interviews and focus groups, or by sharing documents, are listed in the Appendices. Again, we thank them and hope that they feel their comments are fairly reflected in this report.

This project has taken an independent perspective on the needs for more client-focused service. While advised by program directors, senior managers of the Attorney General, and representatives from other ministries, the Review Team members are not staff of the programs under review. This has ensured that the Team's perspective remained objective and fresh. It has also created some challenges in developing an intimate understanding of these programs and leave us open to correction of errors, omissions, and failures of understanding.

Clearly there are no simple answers to delivering better client service - half of the battle is getting the question right. In this regard, we hope that the criteria developed in this report, as much as the options identified, open up new ground for discussion.

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I. INTRODUCTION

A. OBJECTIVES AND SCOPE

Delivering optimal and appropriate client service is the most rewarding and telling indicator of organizational success. Even with the best intentions, creating total quality service is also among the most difficult challenges for an organization to meet. As a rule of thumb, an estimated 70% of quality service initiatives end in failure. Changing service quality is a difficult challenge because it entails change in every aspect of an organization. It involves both internal and external reform: affecting an organization's structure; its leadership, front line, and support roles; its culture; the view members hold of it and themselves; and the images they convey to the outside world.

Given these realities, the objectives of this review have been very ambitious in scope. The review team has developed a vision of client-focused service, including rights and well-being, which can best direct quality service for vulnerable peoples as provided by the Ontario Ministry of the Attorney General (MAG or the Ministry). The programs under review have been the Office of the Public Trustee, including legislative provisions for substitute decision-making forthcoming in 1994, the Office of the Official Guardian, the Family Support Plan, the Victim/Witness Assistance Program, and, to a lesser degree, the Supervised Access Pilot Project and the Criminal Injuries Compensation Board.

Given current restraints, at the same time an emphasis has been placed on developing a coherent, cost-effective integrated framework for client service. This has involved examining the potential benefits and costs of delivering these services under different operational and regional structures. When options for restructuring of services are considered in this report, they have been assessed first against their ability to provide necessary service requirements, and second against their ability to achieve economies of scale through coordinating opportunities.

In listening to clients and community, this review has defined needed organizational changes "from the outside to the inside". As a result, the scope of the review has been further broadened: additional questions have been raised about the roles played by these programs in relation to other services and supports available to clients, including those provided by family and friends, professionals, and other formal bodies. Since these programs are only part of a broader set of services and supports, the review has therefore attempted to refine the distinctive role played by each of these programs in relation to a continuum of supports. This in turn has led to questions about which activities can best achieve that distinctive mandate. Finally, it has pointed to issues surrounding the appropriateness and capability of these programs to take on leadership, facilitation, training, public education, or other activities which can potentially support the work of the total continuum.

At the same time, this review has raised questions beyond the scope of individual programs or their opportunities for reform. By focusing on the similarities and differences among these programs, this review has discovered some of the more systemic opportunities and barriers to implementing this client-focused service vision in the Ministry, as well as a view of the potential organizational options. While it is important to understand the conditions of difference that have and will continue to shape the activities and structures of these programs, in order to ensure that the central mandate or "business" remains focused on client service, commonalities across these programs have brought new opportunities into focus.

An analysis of these similarities and differences has led to questions about broader structural issues. Thus, while a number of these programs have undergone repeated reviews over the years, or are now in the middle of some level of operational review, the broader cross-program perspective of this review has opened up questions about their common issues and problems, as well as issues related to their capacity to work with one another in the context of the Ministry.

In exploring commonalities in objectives, needs, and operations, the review has been able to point to some basic coordinating opportunities which can be shared across these programs. These include potential for greater clarity and consistency of vision; economies of scale related to overhead, training, policy development, and technology; coordination to other ministries, other governments, and to the community in the service of consistent and high quality referral; and opportunities for public education.

In order to directly speak to these issues and others, seven related sets of review criteria have been generated for this report. These criteria reflect the client service literature and other readings, as well as our discussions with clients, program staff, and Ministry and government officials. These review criteria form the basis for discussion and organization of this report. They are: client-focused criteria, including both traditional client satisfaction indicators and those which address the development of a client-focused organization; client well-being; client rights; community accountability and participation; operation on a continuum of supports; cost-effectiveness and administrative simplicity; and broader corporate priorities. The detailed dimensions of each of these sets of criteria are discussed in Section IV of this report.

These review criteria are intended not only as the basis for current business decisions related to these programs, but also for the future work of the directors of these programs and others. In this broadest sense, these criteria offer a framework for a deeper understanding of the importance of client service, providing the foundation for a reexamination of the culture of these programs and of the Ministry in supporting client service. For that reason, the broader structural options generated by this review, including discussions of the opportunities for program amalgamation and restructuring on a divisional basis, are assessed against these criteria.

B. STATEMENT OF NEED

Rapidly changing environmental pressures, including the rise of new client needs and demands over the last twenty years, have had important impacts on the development of a vision of client-focused services. These changes - demographic, economic, political, and social - create a continuously evolving context to which programs must respond and seek innovative solutions.

Changing demographics have been one of the most important pressures. These include the impacts of an aging population, the increased numbers of single parent families, increased divorce and disputes about custody and access, accelerating rates of violent crime and elevated levels of incidence for elderly, childhood, and domestic abuse. For instance, the number of persons over 65 is expected to total over 21% of the population by the year 2031. The divorce rate - now at 40% - and rising numbers of children born outside of marriage, suggest that one in three children will live with only one parent at some time before the age of 18. Even at low estimates, one in ten Canadian children and one in ten women are victim/witnesses of abuse. Many of the programs under review were developed to respond to the needs of individuals affected by these trends. The programs must respond to not only incremental, but often dramatic changes in client case loads and expectations. While operating programs in ways which can take into account a changing population base is a necessity faced by the public sector as a whole, it is a particular challenge for programs which deliver services to clients directly.

Equally dramatic changes in the economy have also increased vulnerabilities for clients of these programs. The impacts have been dual. On the one hand, a weakened job market and increased taxation have diminished economic opportunities and resources for individual clients. Family Support Plan recipients, for instance, may find it harder to make ends meet, while payors are harder and harder pressed to fulfil their support obligations. Clients of the Public Trustee may no longer be able to supplement fixed incomes with occasional employment. On the other hand, cuts to the non-profit sector have reduced access and levels of services provided by traditional social agencies, decreasing the range of alternative supports available. This includes food banks, counselling services, shelters, children's aid, and other services and supports to these vulnerable clients.

As part of this economic restructuring, technological advances offer some opportunities for innovation and costs-savings in service delivery. The underlying rule in reforming programs vis a vis technological innovations is appropriateness to service requirements. However, technology has the potential to be a double-edged sword in terms of the programs under review here. On the one hand, technological "efficiency" should not be seen as a replacement for those elements of client contact and service which remain essential to conducting the business of these programs. Eliminating or adding services based on technology alone, without reviewing client needs, is a disservice to a client-focused organization. On the other hand, increased technological capability creates opportunities for cost-savings, reduction in error, central inquiry via telephone, automation in transactions

In a historical context, the kinds of initiatives under consideration are not themselves fresh or unique. Many are echoes of a holistic and participatory vision of the 1970s, the heyday of this genre. Some, in fact, including ideas about "community based" or local governance and the "integration" of services, stem from even earlier origins. Elements can be traced to earlier models of decentralization, privatization, and partnership or citizen participation in the social services sector. In the broadest terms, these changes involve refining and redefining the traditional role of government without placing the public good at jeopardy. More precisely, the challenge is often articulated as one of maintaining current levels of service at lesser cost.

In the Ontario provincial policy context, these trends are reflected in: an expenditure reduction exercise focused on eliminating unnecessary programs or costs; the development of community boards, councils, and other mechanisms which promise to create greater flexibility and responsiveness by locating accountability at local levels of government; and efforts to reduce duplication by integrating services delivery, coordinating efforts across ministries, and disentangling responsibilities across different levels of government:

Government-Wide Efforts - At the global level, the current expenditure reduction exercise in the Ontario public service reflects an immediate sense of urgency and uncertainty in terms of client service. In this new environment, programs feel increasingly threatened and mindful of the need to compete for limited funding - not only by justifying their mandates - but also by demonstrating the cost-effectiveness and value-added elements of each of their activities. However, the shared accountability framework of government creates a systemic safeguard against the risks of arbitrariness and crisis-driven "quick fixes" which might otherwise enter into a cost reduction exercise. To achieve this, proposals intended to effect cost savings and better client service must, more than ever, clearly link expenditures and outcomes. In the context of these reforms, the programs under review and the vital public services they provide need thoughtful evaluation to change.

The second and third elements of change are generally seen as complementary objectives. The development or enhancement of local levels of accountability often forms the basis on which the streamlining of services and cost reduction can be achieved. The focus here is to extend the range of stakeholders involved in decision-making, to make decisions about elimination of redundant services and excessive costs collectively, and at the same time to respond to locally-defined needs in a responsive and flexible manner. Initiatives within both the Ministry of Health and the Ministry of Community and Social Services (MCSS) demonstrate these linked trends.

Ministry of Health - As a signature piece of the Ontario government, the Long Term Care Initiative is a prime example of these directions. Its overriding purpose is to create a more readily accessible, flexible, efficient, cost-effective, and client-focused system. Partnerships among communities, consumers, caregivers, and service providers will facilitate a continuum of care and a readily available choice of community-supported services. The framework for this initiative promotes: a healthy, independent and preventive lifestyle; the integration of

long-term health care and social services; racial equality and cultural sensitivity; and not-for-profit service delivery.

The framework also stresses the need to take a holistic approach to health, recognizing the link with economic and social well-being and emotional well-being. These principles are more concretely articulated by a number of goals to facilitate local planning, improve co-ordination, create community alternatives to institutions, fund equitably across the province, deliver high-quality service, more effectively manage all resources, improve accountability, and adhere to a human resource strategy which protects and supports service workers, including training for displaced hospital workers.

These reforms are seen as imperative, particularly in light of escalating health care costs, shrinking resources resulting from recession, federal cuts in transfer payments, and demographic transition. This latter factor will have a dramatic impact on the quantity and types of services required by Ontarians in the future.

The Province's role in this initiative will be to set broad directions and establish a mandatory basket of services, standards of service quality, and a planning framework that includes analysis of demographic and equity information. It will also facilitate the creation of multi-service agencies and ensure that various services are available throughout Ontario.

Coordination and planning of the system will be carried out largely through District Health Councils and their Long-Term Care Committees, as well as in conjunction with multi-service agencies, supportive housing programs, independent attendant care outreach programs and long-term care facilities. These District Health Councils will have a new mandate for long-term care service planning. This will take place at the local level through their Long-Term Care Committees and at the provincial level through participation in forming government policy. They will ensure equitable distribution of resources within the area and eventually across districts. They will be responsible for reviewing budget data, developing service and allocation plans within funding envelope guidelines and generally ensuring the principles and goals of the new framework are being advanced and put into place through the efforts of the Long-Term Care Committees and Multi-service Agencies.

The Long-Term Care Committees of District Health Councils will be restructured to ensure equal membership of consumers, providers, and other representatives, including local government, francophone and multicultural communities. The committees will be responsible for developing the district long-term care plan based on the community's needs and preferences, provincial guidelines and standards, and other health and social planning criteria. This plan will include: recommended allocation on local funding, monitoring and evaluating changes to the system, reorganizing the area's long-term care system, as well as linking planning with other services such as housing, transportation and other social services. The Committee will make recommendations to the District Health Council, which will then forward the approved plan to the Ministry of Health and the Ministry of Community and Social Services.

The number and location of multi-service agencies will be established through the planning process. They will be not-for-profit and will bring together current community agencies and act as the entry point to the long-term care system. Each will be designed locally but will operate under provincial policies and standards. They will provide a range of community-based services as well as case management and referrals, and decide on eligibility for community support, long-term health care and admission to facilities. They will be funded by and accountable to government, but they will operate according to the locally developed long-term care plan.

The transfer of management responsibility - from the provincial government to the local level - will first be tested through pilot projects. Long-term care area offices will assist District Health Councils with planning, providing budget information and support for the development of multi-service agencies.

Ministry of Community and Social Services - Efforts to create client accountability and reduce costs in the context of this Ministry can best be exemplified by the multi-pronged and comprehensive effort to "integrate" services for children and families at the level of the community. The published policy framework for this initiative sets out as its goals a cohesive integrated service system, accessibility of services, local community participation in the planning process, resources targeted to specified priority groups, equitable distribution of resources, and increased accountability. Integration in this context is defined to include the levels of clients, services, resources, and information. This first implies either "one stop shopping" - in which either a single point of entry refers individuals to the most appropriate delivery point for their particular needs, a single location provides a range of services for efficient delivery, or shared and linked services which provide appropriate and high quality referrals. The other levels of integration seem to imply administrative coherence, that is "joint" or shared planning, programming, budgeting, funding, record-keeping, or other functions.

The objectives of this MCSS policy directive include local planning capacity, coordination at the inter-ministerial level, changes in resource allocation, changes in wages and staffing, links to other services (including young offenders and long-term care) and integration of front-line delivery through removal of barriers. Having just completed a policy framework, the Ministry has yet to flesh out the mechanisms to arrive at these objectives. The directions, however, are likely to be consistent with those developed for long term care.

Other related public policy changes have also had dramatic impacts on the environment in which these programs operate. Changed social assistance structures, placing lone parent families at greater economic risk, have made the collection of child and family support payments even more critical than before. Policy changes which recognize and validate the situations of victims of violent crimes, encouraging them to report childhood, elderly, and domestic abuses, have also had an impact on the client base and expectations placed on a

number of these programs. Deinstitutionalization of those with mental handicap or psychiatric disability has increased the potential clientele of services provided by the Public Trustee, the Official Guardian, and the Victim/Witness Assistance Program.

In light of all these factors, a client-focused review is critical as these programs look to the future. These trends have structural, organizational, functional, and cultural implications which will be further discussed as the basis for the criteria of the review, as well as in the findings and options.

D. POSITIONING PROGRAMS WITHIN A CONTINUUM OF SUPPORTS

In light of these changing client numbers and demands, every program of government needs to reevaluate its objectives and outcomes. Even programs providing essential public services prove no exception. More than ever, responsible public service means using every dollar effectively to achieve optimal impact. Every service program must review its service requirements and focus its resources on essential activities.

In order to focus on its central mandate and to clarify its business, each program needs to carefully reflect on the role it plays on the total continuum of supports and services provided to its clientele. In this sense, programs can examine their relative and realistic contribution vis a vis other supporters, including families, friends, self-help resources, professionals, community agencies, the voluntary sector, other programs within their ministry and related ministries in Ontario, and other levels of government.

This leads directly to questions about whether programs are providing services which duplicate, complement, or are in conflict with other supports. Positioning a program well on the continuum of supports means defining its distinctive role and identifying those activities which best help to achieve it.

Less directly, this leads to questions about the most appropriate role for programs to play in relation to others on the support continuum. Even in cases where many other services are available in the community, some programs may provide essential service through coordination and training, rather than through direct delivery contacts with clients.

Finally, this perspective also raises questions about the flexibility and resilience of these programs to respond to their changing environments and client needs. Service enterprises, even in the public sector, cannot afford to ignore customers and clients. The capacity to listen to, to learn from, and appropriately take into account external changes involves developing programs with innovative, creative, and learning environments - characterized by management cultures which place an emphasis on the ability of every member of the organization to contribute, mobilize and turn resources and ideas into client-focused energies.

II. METHODOLOGY

Given tight deadlines, the research team had to be extremely focused and selective in gathering key pieces of information from the most pertinent sources. While we have depended on the insights of staff from concerned programs and throughout the Ministry, our report has been concerned with bringing a client perspective to the issue of client service. For this reason, consultations with individuals and organizations outside the Ministry, as well as with other jurisdictions, have led our activities.

As a largely qualitative review, rather than a statistical enterprise, we have brought to bear the opinions, writings, and perspectives from a range of stakeholders. Identifying participants for this consultation has been a "snowball" process. The names of informants were drawn first from knowledgeable staff within programs, but later also on the basis of recommendations from the community. Thus, while not of sufficient duration to comprise a formal program review or policy development exercise, we have borrowed from evaluation, management audit, and policy research in order to tailor our methodology to our goal.

The findings and analysis of this report stem then from a logic generated by drawing on multiple lines of evidence, rather than from population surveys or statistically representative samples. The strength of this report has been its capacity to listen, synthesize, and report on the divergent views of diverse stakeholders.

Our activities have included the following:

A. DOCUMENTATION REVIEW

A variety of documents were examined. These were:

- 1) Review of current program mandates in order to understand their consistency with current program activities, and the directions anticipated through Treasury Board submission, or emerging legislation.
- 2) Review of recent Provincial Auditor's findings and methodology in relation to the above programs.
- 3) Review of information collected in a number of other exercises currently under way in the Ministry, including the Ministry-wide Strategic Planning, a Civil Law Program Review, the Official Guardian Strategic Review, the Public Trustee Operational Review, and others. In order to ensure coherence and avoid duplication, documentation and research developed in the course of these exercises was made routinely available to this task group.

- 4) Review of mandate and structure of programs delivering these same or similar services in other jurisdictions.

B. INFORMANT INTERVIEWS

Key informants across the province were interviewed, either in person or by telephone, to gather their experiences and insights about the programs. The following categories of interviews were held:

- 1) Interviews were held with a cross-section of program staff within the Ministry of the Attorney General. The "Discussion Guide for Interviews" used can be found in Appendix C. The informants contacted were:
 - senior management
 - program staff
 - Office of the Public Trustee
 - Office of the Official Guardian
 - The Family Support Plan
 - The Victim/Witness Assistance Program
 - Criminal Injuries Compensation Board
 - Supervised Access
 - other Ministry staff
 - finance
 - human resource management
 - public consultation, awareness, and outreach
 - communications
 - policy development
 - legal services
 - legislative development
 - computer and telecommunications.
- 2) Interviews were held with key external stakeholders. Interview guides are in Appendix C. Names were generated initially by program staff and then by contacts within the community. Attention was paid, where possible, to obtaining perspectives from aboriginal and multicultural stakeholders, as well as those representing persons with physical or mental disability. Lists of representatives of organizations spoken with are in Appendix B. The names of consumers and individual citizens interviewed are not provided in order to protect confidentiality. These interviews included representatives from:

- program clients/consumers
- client representatives (family, friends)
- self-help groups
- community service delivery agencies
- non-direct service agencies
- judiciary
- the Bar
- members of other Ontario government ministries.

3) Informants from other jurisdictions were also contacted. The interview guide used for some of the discussions is in Appendix C. A list of those spoken with is in Appendix B. These informants include:

- ministry officials of comparable programs
- client advocates
- representatives of self-help groups.

C. FOCUS GROUPS

Discussions were held with small groups of program recipients, community agency representatives, and members of the Bar. The nature of the clients of some of the programs under review, such as those of the Victim/Witness Assistance Program or the Office of the Public Trustee, meant that it was inappropriate to hold consumer focus groups. In these situations, individual clients or their representatives were interviewed. Focus group questions can also be found in Appendix C. The lists of focus groups held are in Appendix B.

D. FILE DATA

A review of statistics and expenditures was performed for each program. The data collection guide used is in Appendix C. The following two categories of data were examined:

- 1) Review of program delivery statistics, including case load, numbers of case enquiries, staff, training, etc. These are compared across regions where possible, including best and worst practices.
- 2) Review of program expenditure data, especially as it is related to the cost-effectiveness of regional operations.

E. DEMOGRAPHIC PROFILES

Demographic profiles of the consumers of each program were compiled, where possible. Relevant characteristics, depending on the program, were examined such as:

- number
- age
- gender
- race/ethnic background
- number of children
- regional location
- type of court case
- financial situation.

F. LITERATURE REVIEWS

Reviews of current research and government reports of several different areas were undertaken to provide context for the report. These areas are:

- 1) Private sector and other government examples of improving quality service
- 2) Client service orientations
- 3) Continuous learning cultures/organizations
- 4) Well-being and rights.

III. ORGANIZATIONAL DESCRIPTIONS FOR EACH PROGRAM

This section of the report presents organizational descriptions of each of the programs under review. These include a formal statement of mandate and activities; a listing of program responsibilities and the structures which are in place to achieve them; and a client-focused description which looks at the program's responses to individuals of different kinds in different circumstances.

A. FAMILY SUPPORT PLAN

Mandate and Activities

The Family Support Plan (FSP) program states that its mandate is to ensure that parents recognize and fulfil their support obligations to their families to maintain the well-being and quality of life of their children.

The program does this by enforcing and monitoring support obligations as required by a support order or contract, and promoting awareness of family support obligations as a legal, economic and social imperative. The program also enforces custody orders when necessary, but this is a relatively small proportion of its total activities.

Jurisdiction and responsibility are given by statute, the Family Support Plan Act and the Reciprocal Enforcement of Support Orders Act.

The program was established originally in July, 1987 under the Support and Custody Orders Enforcement Act. This act is now replaced by The Family Support Plan Act (FSP), proclaimed March 1, 1992. Legislative change provided the capacity for major enhancements to effectively meet the mandate. Most dramatic of these changes is the provision for the automatic deduction of support payments (Support Deduction Order or SDO) from income, an important tool in the fight against the poverty of women and children in Ontario.

Structure and Responsibilities

The FSP Program is structured as a regional operation with eight offices in the Province. The Central Inquiry office which houses the telephone information service, is a separate office located in Sudbury. Centralized operations in Toronto Head Office include the Director's office, seconded legal services, controller, enforcement planning and analysis, resource planning and analysis, client relations and information services and the Reciprocity office (see attached Chart FSP 1 for the full program and Chart FSP 2 for the typical regional office staffing). The functions for these sections are as follows:

Head Office (approximately 31 staff)

Director:

- responsible for overall direction of the program

Director of Legal Services:

- manages delivery of regional legal services
- oversees custody enforcement
- develops legal policies and procedures
- co-ordinates development of new regulations and legislation
- (currently the Director of Legal Services also fills the position of the Director on an acting basis)

Controller:

- provides direction to regions on effective funds management
- manages the trust fund
- prepares and monitors financial plans, budgets and associated documentation
- develops financial system requirements

Enforcement Planning:

- plans, develops and monitors effective enforcement strategies, policies and procedures
- provides interpretation and advise on enforcement issues

Resource Planning:

- provides support for staff recruitment, development and human resources management
- ensures the program is accommodated in appropriate facilities
- promotes effective administrative procedures
- supports technical development through systems technology implementation and training
- manages the automated telephone information service

Client Relations:

- provision of guidance, tools and training for effective client relations
- develops and manages public consultation and outreach
- public awareness campaign

Reciprocity Office:

- responsible for transferring cases to and from other jurisdictions to enforce support orders from across Canada as well as with most US States and many countries in Europe and the British Commonwealth under the Reciprocal Enforcement of Support Orders Act.

Central Inquiry (7 full time and 10 regular part time staff)

- the centralized telephone access service provides automated payment and enforcement information (client keys in case number on telephone)
- option of speaking to a live agent (all positions bilingual)
- service provided Monday to Friday from 8:30 a.m. to 4:30 p.m., with extended hours until 8:30 p.m. for the automated portion only.

Regional Offices (approximately 300 staff)

- enforces support and custody provisions of court orders by taking such actions as issuing warning letters, garnishments, writs and initiating default hearings
- responds to inquiries at the counter, by telephone and in writing
- investigates inquiries from the Ontario Ombudsman, Members of Parliament (MPs), Members of Provincial Parliament (MPPs), Minister's staff, the legal profession, members of the stakeholder groups, other ministries and members of the public
- processes support payments, reconciles daily receipts for bank deposits
- processes financial adjustments to cases

It was noted by a number of staff throughout the system that there are a number of activities which duplicate efforts between the Head Office and the Regions. These include budget systems, human resource responsibilities and responses through the client service sections (MPPs, Ontario Ombudsman, etc.).

The FSP program is situated in the Courts Administration Division of the Ministry and operates on a budget of about \$25 million. There is some staff opinion that this presents a conflict of interest in that the program is a litigant before the courts.

Chart FSP 1: Family Support Plan - Organization Structure

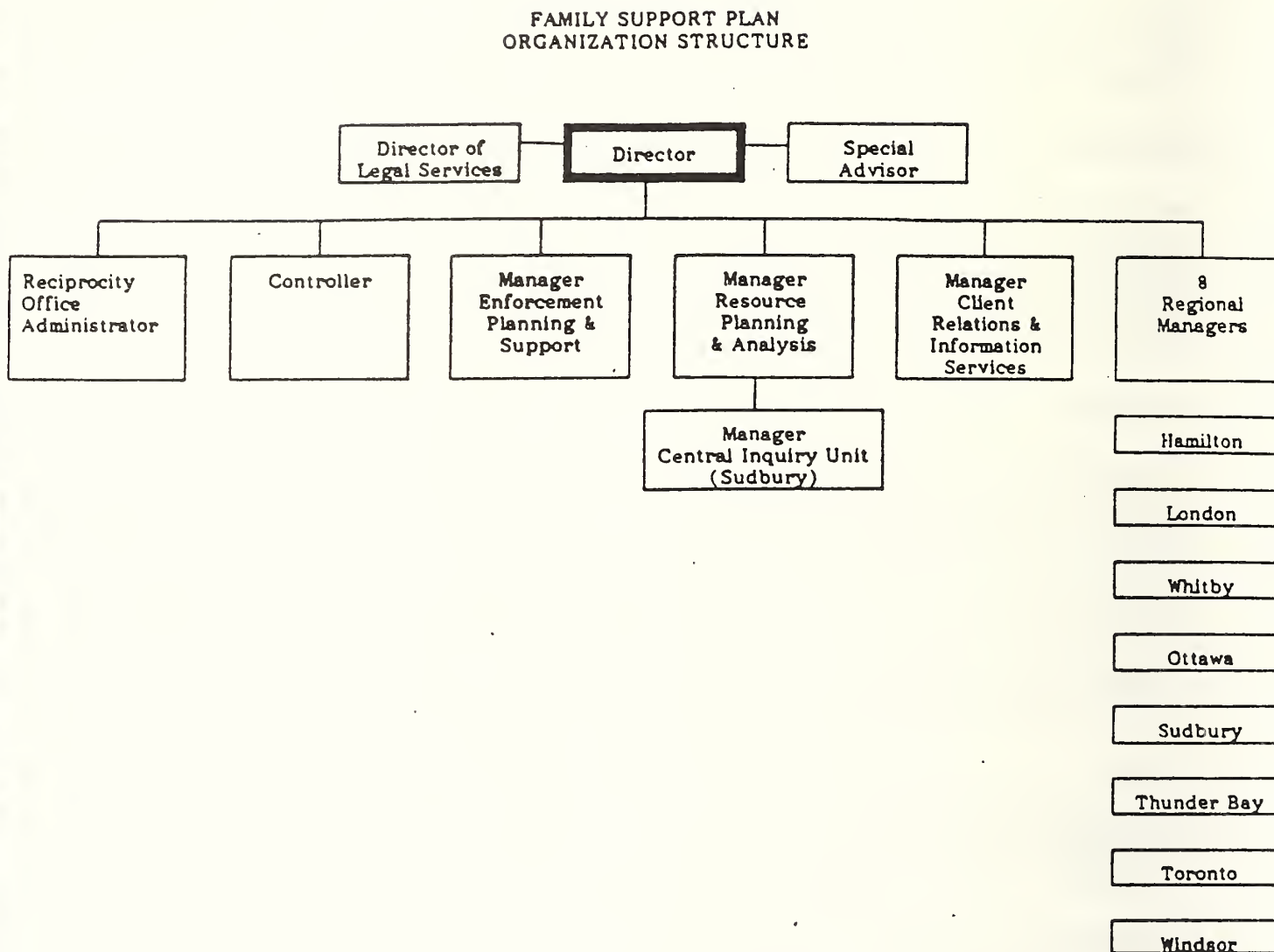


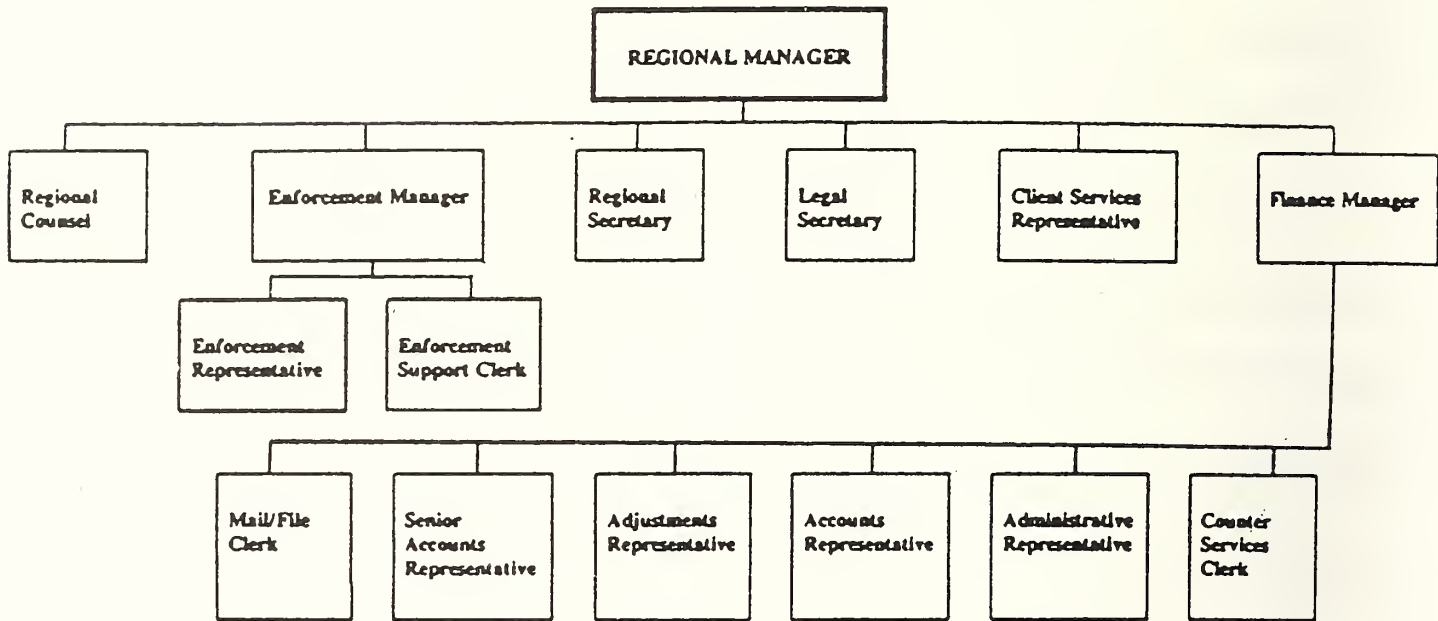
Chart FSP 3: Family Support Plan - Three Year Overview

	90-91	91-92	92-93
I No. of Support orders Filed (Caseload)	85,300	95,700	110,900
Increase over previous year (percent)		12.2%	15.9%
II Total Receipts Collected in the Fiscal year(\$ million)	\$134.9	\$164.4	\$221.4
Increase over previous year (percent)		21.9%	34.7%
III Arrears registered at Year-end (\$ million)	\$397.4	\$488.1	\$630.3
Increase over previous year (percent)		22.8%	29.1%
IV Arrears registered at Year-end (\$ million)	\$397.4	\$488.1	\$630.3
No. of Support orders Filed (Caseload)	85,300	95,700	110,900
Average Arrears per case (\$ dollars)	\$4,659	\$5,100	\$5,683
V Total Receipts Collected in the Fiscal year(\$ million)	\$134.9	\$164.4	\$221.4
No. of Support orders Filed (Caseload)	85,300	95,700	110,900
Average Collected per case (\$ dollars)	\$1,581	\$1,718	\$1,996
VI Total Receipts Collected in the Fiscal year(\$ million)	\$134.9	\$164.4	\$221.4
Total Receipts Returned in the Fiscal Year to the Treasurer of Ontario (\$ million)	\$13.0	\$22.0	\$28.4
Increase over previous year (percent)		69.2%	29.1%
Per cent of receipts collected that are returned to the Treasurer of Ontario	9.6%	13.4%	12.8%

Chart FSP 2: Family Support Plan - Organization Structure: Regional Office Staffing

FAMILY SUPPORT PLAN

Organization Structure: Regional Office Staffing



Caseload

The number of cases handled by the FSP program has grown at a rapid rate over the last seven years:

87/88	25,000
88/89	53,300
89/90	71,100
90/91	85,300
91/92	95,700
92/93	110,900

Chart FSP 3 on the previous page presents aspects of the program for the past three years in regards to number of support orders, receipts collected, arrears registered and receipts returned to the Treasurer of Ontario.

It can be noted on this chart that the caseload of support orders for 1992-93 was in the order of 110,900, a 15.9% increase over the previous year. Receipts collected in the same year amounted to \$221.4 million, which represents an increase of 34.7% over the previous year. Arrears are also growing and at the end of the fiscal year stood at \$630.3 million. The average arrear per case is \$5,683, while the average collected per case was \$1,996. 12.8% of the receipts collected in the year, or \$28.4 million was returned to the Treasurer of Ontario.

The largest category of staff is the enforcement representative, at the regional level, of which there are about 100 at a level of OAG-10. This results in an average caseload of 1100 files per enforcement representative and an annual cost per case of \$225,000 (viz. \$25 million divided by 110,900 cases). The amount of time spent on each file varies significantly due to the individual circumstances of each case.

Process

At the point that a support order is made for the payment of money as support or maintenance in an Ontario court, a support order is automatically generated and forwarded to the FSP program to be enforced. A support deduction order means an order requiring any income source that receives notice of the order to make payments to the Director of the FSP program in respect of the payor named in the order, out of the money owed by the income source to the payor. If a person entitled to receive support requests so, the program also will enforce old orders, domestic contracts and paternity agreements (those previous to the legislation coming into effect in March 1992). The FSP program contacts the payor's employer and sets up the automatic wage deduction as a result of obtaining the SDO. If the employer is unknown, then upon receipt of the

court order, the program may proceed to trace and locate activities in order to take further action.

The recipient is sent a "filing" package which is heavily relied upon for information to make it possible for the program to proceed. For example, identifying bank accounts or a SIN number so that a federal garnishment could be applied. With the appropriate information, the program proceeds to appropriate measures to ensure payments are flowing and any arrears are being addressed. Actions include bank account garnishments, federal garnishments (UIC, tax returns), writ of seizure and sale on property, warning letters and proceeding with a default action if there is no response from the payor.

1992-93 enforcement actions were as follows:

warning letters issued	20,700
garnishments issued	25,100
writs issued	11,700
default hearings initiated	1,500

Client-focused Description

The clients of the FSP program are primarily seen to be:

- i) recipients (on behalf of themselves and/or their children)
 - 84% of support orders involve child support
 - 153,100 children are involved in these cases
- ii) Ministry of Community and Social Services (MCSS)
 - 33,500 cases, or 30% of cases are assigned to MCSS
 - (individuals receiving Family Benefits and receipts therefore are returned to MCSS)
- iii) payors
 - 97% of payors are men

Major stakeholders in the process include:

- i) employers
- ii) legal community

The FSP strives to conduct its business as a neutral party acting on behalf of families in a situation where parents are often in conflict. Recipients and payors want an objective, empathetic, transactional relationship with the Family Support Plan. They do not want a paternalistic approach to their business. Recipients and MCSS want dollars flowing according to the court order or separation agreement in an expeditious manner.

The FSP program is accessible to recipients and payors through a 1-800 number or alternatively by attending at the counter at one of the eight locations across the province. Recipients contact the program for a number of reasons: to ascertain if a cheque has been sent and the amount; to determine if any new enforcement action has been taken; to identify new information on their case such as a "hot tip" about the payor's employer or a new address; or to inquire why funds are not flowing. Payors attend at the counter to pay support amounts or to inquire as to why funds have not flowed in an expected manner.

Income sources/employers contact the program through a newly introduced 1-800 number for employers. Their contacts are usually to inquire about the details of their obligations such as how to calculate and deduct payments towards arrears.

B. SUPERVISED ACCESS PILOT PROJECT — Rachael Debraio

The Supervised Access Pilot Project was examined by the Social Justice Review in a very limited manner. The Ministry has commissioned an evaluation to provide an assessment of supervised access services being offered. Therefore, this review has relied heavily on the interim findings of that evaluation and not tried to duplicate the work in any manner.

Mandate and Activities

Objectives of the Project

1. To provide a safe, neutral and child-focused setting for visits between a child and non-custodial parent or other family member;
2. To ensure the safety of all participants, including staff;
3. To provide trained staff and volunteers who are sensitive to the needs of the child; and
4. To provide the court and/or lawyers with factual observations about the participant's use of the service.

Program Description

Supervised access is primarily a short-term arrangement which benefits a child by allowing him or her to establish or continue a relationship with the non-custodial parent in a safe environment.

When parents separate, access visits with children may be a problem. Sometimes difficulties arise at the time of the exchange of the child between the parents, or between the parent and a relative, such as a grandparent. Other times there may be concerns about the visits themselves.

The Supervised Access Pilot Project offers separated families a way to deal with some of these problems. Supervised access centres provide a setting where visits and exchanges can take place under the supervision of trained staff and volunteers.

The provision of a neutral service is a central mandate of the program.

Visits: Supervised visits may be appropriate in cases where, for example, there are concerns about the safety of the child and/or the mother; the non-custodial parent has a drug or psychiatric disability; there has been a lengthy separation between the parent and the child; or abduction has been threatened.

Exchanges: In some cases it is important to ascertain whether or not the parent who is visiting with the child is under the influence of drugs or alcohol at the time of the exchange. In other cases, the safety of the mother at the time of the exchange may be a concern. In separated families where there is a great deal of unresolved conflict between the parents, a neutral place to exchange the children for visits makes access easier to arrange and reduces the tension for the child.

Structure and Responsibilities

The Ministry is providing \$2 million over two years (1992-93 and 1993-94) to fourteen supervised access programs across the province. These funds are mandated under the Children's Law Reform Act. The project sites report into the MAG through a Project Manager in the Policy Development Division. Each site submitted a proposal for funding to the MAG. These proposals were reviewed and selections for funding were made by an advisory committee to the project. This committee is made up of nine non-government members - a family court judge, a family law lawyer, a member of the francophone community, a member of the aboriginal community, an early childhood education coordinator, a representative from the Ontario Association of Interval and Transition Houses, a representative from a Children's Aid Society, a representative from

the Ontario Immigrant and Visible Minority Women's Organization, a representative from a non-custodial parent group. Also on this committee are three ex-officio government members from Ontario Women's Directorate, Ministry of Community and Social Services and The Office of the Official Guardian.

The fourteen sites across Ontario are non-profit, charitable organizations. Thirteen of the fourteen programs are linked to an established agency. Eight of these agencies receive the bulk of this funding from the Ministry of Community and Social Services. In those established agencies the Supervised Access project sites receive support from the agency such as facilities and/or equipment, clerical support, consultation with professional staff, assistance with training, recruitment of volunteers, supervision of the program and public relations.

Most programs operate with a coordinator, limited number of staff and a cadre of volunteers. Each project is responsible for awareness of the program in the community.

Referrals: By far the majority of referrals are from the court (70%). Lawyers for the custodial parents are the next most frequent referral source (16%), followed by lawyers for the non-custodial parents (11%). The majority of programs require at least verbal agreement by both parents to supervised access and five of the project sites require a court order or written agreement.

Caseload: There is a tremendous variation across programs in use of the service. In 1992, the number of visits ranged from two to 131 per month, the number of open cases from one to 60 and exchanges from zero to 140. Most agencies do not yet appear to have reached their "capacity" and are still growing.

C. VICTIM/WITNESS ASSISTANCE PROGRAM

Mandate and Activities

Program Mandate

The formal mandate of the Victim/Witness Assistance Program is: "To provide a comprehensive service to victims and witnesses of crime to enhance their understanding and participation in the criminal justice process".

Specific Program Goals

1. To provide information and assistance throughout the court proceedings to enhance victim/witness understanding of and participation in the criminal justice process.
2. To assist the victim/witness in regaining a sense of well-being.
3. To encourage development of community support structures for the assistance to victim/witnesses of crime.

Historical Overview

Since the mid 1980's, both the federal and provincial governments have turned their attention and action through legislation and policies to the needs of victim/witnesses of crime in the criminal justice system. This corresponds to the substantial increase in the rate of violent crime in Ontario and the increasing demands for recognition and service defined by victim/witnesses.

In response to the problems faced by victim/witnesses participating in the criminal justice system and in response to the demand for service voiced by victim/witnesses of crime and their advocates, the Ministry of the Attorney General (MAG) created a program to assist victims who are witnesses for the Crown. In 1987, the program commenced operation in ten pilot sites throughout Ontario (Ottawa, Hamilton, Windsor, Kingston, Kenora, Sudbury, London, Pembroke, North York and Etobicoke) with funding provided through the Family Violence Initiatives Program administered out of the Ontario Women's Directorate.

In 1989 the Program was given permanent status and two additional sites were added (Newmarket and Scarborough). At this time funding was approved under the Wife Assault and Sexual Assault Initiatives Program of the Ontario Women's Directorate.

The Ontario program was designed as a court-based, post-charge service to help make the criminal justice system more responsive to the needs of victim/witnesses of crime. Prior to this direction, these individuals were often forgotten participants. The justice system directed its attention to ensuring the rights of the accused. The victim/witnesses were left feeling isolated, manipulated and ignored by the criminal justice system. With the growing public demand for justice for wife assault and sexual assault victim/witnesses, formally decreed in the Family Violence Initiatives, increasing numbers of charges have been laid and the role of the victim/witnesses has become crucial to successful prosecution.

All of the other provinces and territories have some type of victim/witnesses program in operation. In reviewing the programs in the provinces of Alberta, New Brunswick, and Prince Edward Island, it is interesting to note that while none of these three programs are now court based or linked to the Crown Attorney's system, they all enjoy a good working relationship with the Crown Attorneys. They all feel that being separate from the Crown Attorneys precluded real or perceived conflict of interest between the two. Funding for these programs come mainly from the Federal and Provincial Victim/Witnesses Fine Surcharge Funds. They also operate under a pre-charge mandate as opposed to Ontario's post-charge program. These programs are set up as Victims Services Branches. Their responsibilities include the provision of information and support before and during the court proceedings, the Victim Impact Statement Program and the Criminal Compensation Program.

Supporting Legislation, Policy and Programs

With the changes in attitudes and directions towards victim/witnesses of crime, the preparation of witnesses became a priority in the criminal justice system. Coupled with the prosecutorial need was the growing public demand for recognition and reasonable treatment of victim/witnesses.

Passage of specific legislation, policies and program have enhanced the focus on victim/witnesses. For example, Bill C-89 Victim/Witnesses of Crime Bill with Amendments to the Criminal Code contains amendments to improve the impact of the criminal justice system on victim/witnesses of crime. It received Royal Assent in July, 1988. All sections except those dealing with surcharge and restitution came into force in October, 1988. The Federal Fine Surcharge was proclaimed July 31, 1989. The intent of the surcharge is to direct these funds to victim/witnesses' services. This made mandatory the imposition of a surcharge (15% of a fine and \$35.00 where no fine is imposed) on all offenders guilty of offenses against the Criminal Code, Narcotic Control Act, and the Food and Drugs Act. The judge can waive the surcharge if the surcharge will cause "undue hardship" to the offender.

The restitution provisions, yet to be proclaimed, apply to all property offenses and offenses causing personal injury, and would create a statutory obligation on the courts to order restitution in all applicable and appropriate cases. This creates a legislative vehicle to acknowledge victim/witnesses and their right to have restitution considered in all applicable cases. It also creates a two tiered enforcement vehicle for victim/witnesses to use if default occurs.

In addition, the Bill provides explicit provisions dealing with the introduction of a victim/witness impact statement as a factor to be considered at sentencing. This Program has yet to be established in Ontario by the Lieutenant Governor in Council but informal statements are being used throughout the province to allow victim/witnesses to state, in their own words, the effect of the crime on their life.

Bill C-15, proclaimed January 1, 1988, amends the Criminal Code and Canada Evidence Act to create new offenses relating to child sexual abuse, revises others and creates new provisions relating to the giving of evidence by children. These provisions allow a child to give evidence from behind a screen or by closed circuit television.

As a result of Bill C-15, federal funding was given to the Metropolitan Toronto Special Committee on Child Abuse's Child Witness Support Project and the London Family Court Clinic's London Child Witness Project. The MAG has provided funding since 1991-92 for these two child victim/witness projects.

The Ministry has funded a Witness Protection Program since 1985. This Program provides maintenance and other costs to protect witnesses and their families in criminal cases where the life or safety of the witness is perceived to be in jeopardy.

The Ministry's Emergency Legal Advice Project aims to increase the accessibility of legal advice to victim/witnesses of family violence by increasing the pool of lawyers with training in family violence and by simplifying the procedures needed to access legal information. The cornerstone of the service is the provision of two hours of emergency legal advice to battered women. The Ontario Legal Aid Plan distributes preprinted application forms to facilitate this service.

In addition to the Victim/Witness Assistance Program, the Ministry has designated areas of expertise for specific prosecutions to ensure awareness of social, psychological and legal issues and sensitivity to particular victim/witnesses of crime. In particular, at least one Assistant Crown Attorney in each Crown Attorney's office has been designated as Coordinator for sexual assault prosecutions; one Assistant Crown Attorney in each office as Coordinator of wife assault cases; and at least one Assistant Crown Attorney in each office as Coordinator for child abuse cases. These three Crowns are considered experts in the specific areas and part of the expectation is that they will strive to educate other

Crowns to the intricacies of victim/witnesses' needs in each of these areas. Nine of the ten provinces have legislated a Victim Bill of Rights. Ontario is now entertaining discussions on a Private Member's Bill for an Ontario Victim/Witnesses' Bill of Rights asking that victim/witnesses be given access to health and social services, medical treatment, counselling and legal services that are responsive to their needs.

One of the main concerns in such a Bill is the question of enforceability. Typically, such a Bill sets out the services and remedies a victim/witness may ask for without a government commitment to make them available. Quebec is the only province with an enforceable Victim's Bill of Rights. Success of this program is still being monitored. Bills without enforceability leave themselves open to danger of setting up unrealistic expectations and further victimization for the victim/witnesses.

Previous Program Reviews

The Victim/Witness Assistance Program has undergone several previous reviews commissioned by the Ministry.

Two external studies were commissioned in 1987 to examine client and professional opinions of the Program. A Client User Satisfaction Survey was conducted by Jamieson, Beals, Lalonde and Associates in collaborations with R.R. Ross Associates. A Professional Opinion Survey was conducted by consultant Lee Axon who assessed the degree of acceptance and satisfaction of the professional community who also served the same clients. Both surveys indicated that there was widespread support for the continuation of the Program.

In the spring of 1988, a process evaluation of three program sites was undertaken and program refinements were made on the basis of the report recommendations.

Later, the Ministry requested a review of the Program to determine the most appropriate service delivery model for ongoing development of services to meet the needs of clients. The ARA Consulting Group submitted their report in December, 1991. This report found that the current court-based system within the Criminal Law Division was most appropriate for reducing victim trauma, system induced trauma and increasing effective participation of witnesses in the court proceedings. It determined that the service however, is not well positioned in the Ministry to influence Ministry policy and decision-making. The report recommended that the Provincial Coordinator's position be strengthened within the Ministry. The report proposed a Program model of service based on the principle of clear parameters of services rendered by the Program and by the community.

Structure and Responsibilities

Structure

The Program maintains a centralized administration at Head Office with direct service delivery provided at 13 sites (Sudbury, Kenora, Hamilton, London, Windsor, Kingston, Ottawa, Pembroke, Newmarket, Etobicoke, Scarborough, North York, and Kitchener) located in courthouses across the province. The Divisional organizational chart shows that the Provincial Coordinator reports directly to the Assistant Deputy Attorney General of the Criminal Law Division. All site Victim/Witness Coordinators report directly to the Provincial Coordinator.

Due to recent multi-victim/witnesses/multi-perpetrator prosecutions in Ontario, the Program has responded by relocating three existing Coordinators and hiring five contract staff to participate in the special prosecutions at St. John's and St. Joseph's Training Schools, the Grandview Training School and a multi-victim/witness abuse case in Prescott. The Grandview location in Kitchener will be a permanent site location after the special prosecutions are completed.

The Program employs a total of 35 staff, plus five contract staff who handle the special prosecutions.

Chart VW 1 shows the Program's organizational chart. Chart VW 2 shows the Divisional organizational chart.

Chart VW 1: Victim/Witness Assistance Program - Organizational Structure

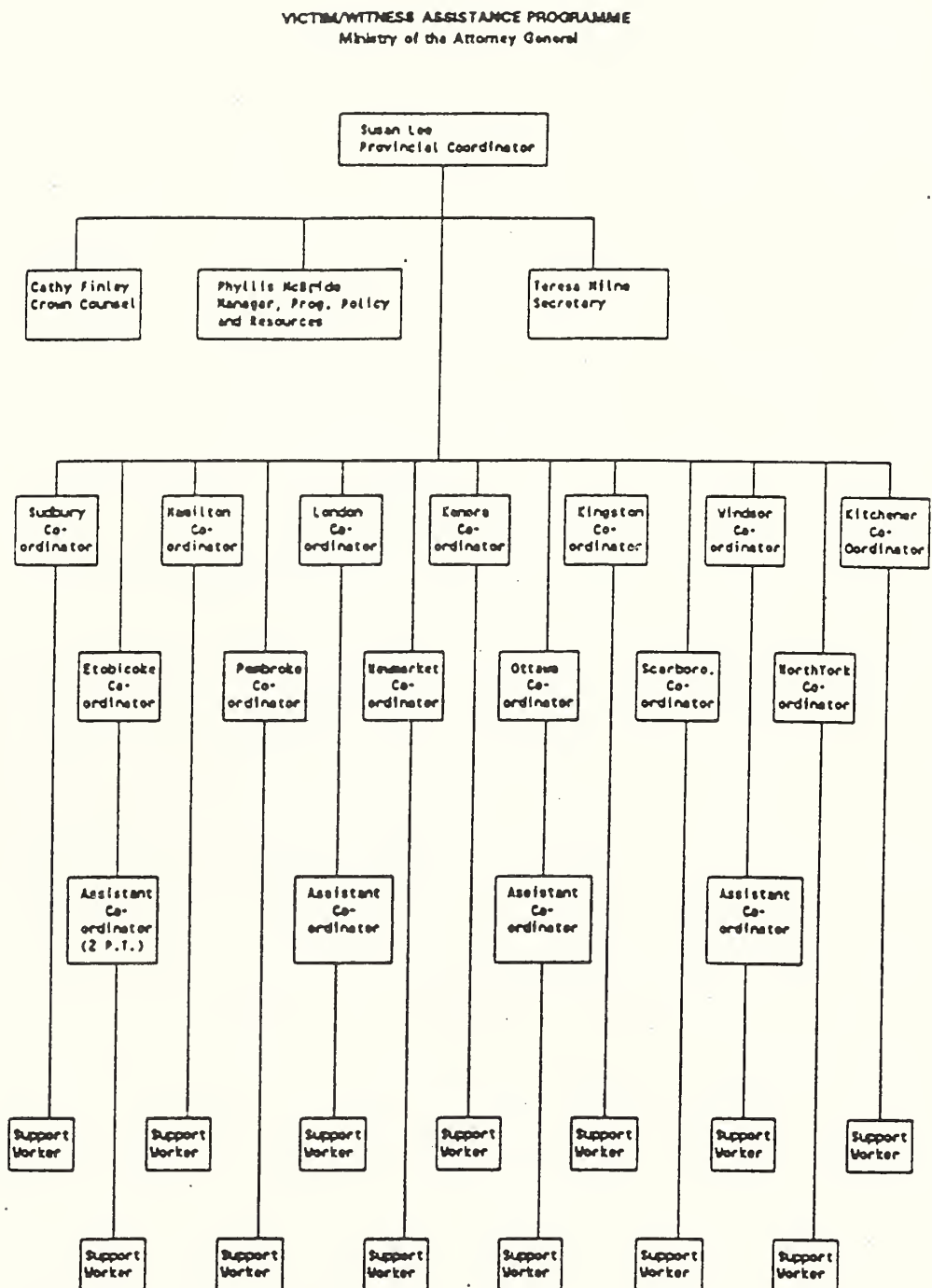
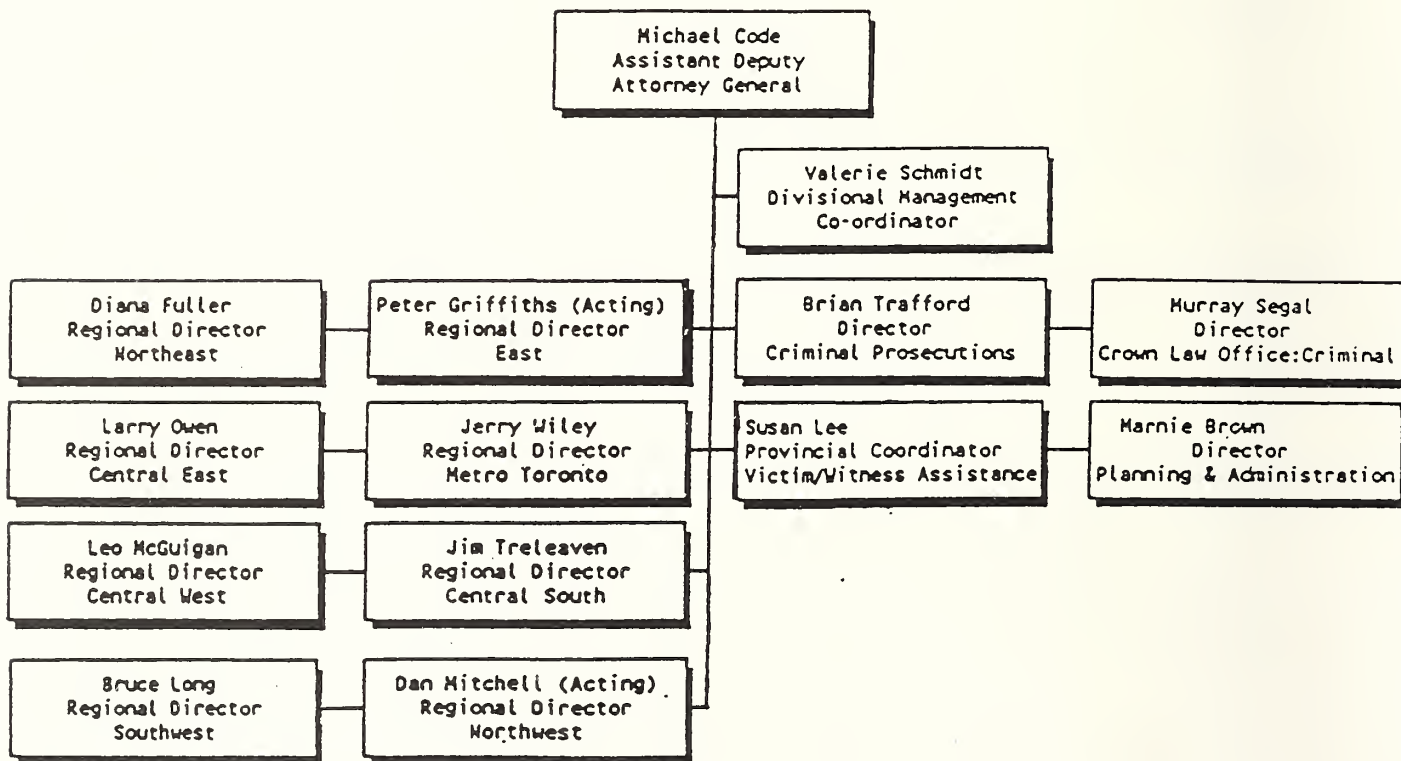


Chart VW 2: Criminal Law Division - Organizational Structure

Organizational Structure
Criminal Law Division
June 1993



Hiring of Staff

The hiring of Program Coordinators for all site locations is done by the Provincial Coordinator or the Manager of Program, Policy and Research. The local Crown sits on the interview board. Advertising for the position of Program Coordinator is done by placing the employment advertisement in the Globe and Mail and in the government of Ontario newspaper, Topical.

The Program receives a large number of applications from target groups and therefore sees no reason to do further outreach to the various target groups. The Program has job specifications for all positions. In choosing the most suitable candidate for the position of Program Coordinator, the board looks for the best combination of previous experience in community work in victim/witnesses areas such as work in shelters or with the Children's Aid Society, coupled with background in the criminal justice system.

The local Program Coordinator is responsible for the hiring of the Assistant Coordinator and the Support Worker. Advertisements for these positions are placed in the Topical.

Site Offices

Needs of Victim/Witnesses: The needs of the clients vary based on the particulars of each case; however the core categories of assistance provided on a regular basis at the sites providing direct service are noted below:

1. General information about the court proceedings (operation of court system, courtroom protocol, legal terminology, ministry policies regarding prosecution matters, victim/witnesses' rights and role in the process).
2. Case specific information concerning victim/witnesses' particular case (dates & time of court proceedings, status of the accused, meaning of the court proceedings).
3. Assessment of the victim/witnesses' needs and appropriate referrals to community & government agencies eg. Criminal Injuries Compensation Board, Crown Attorneys.
4. Emotional support throughout the whole post-charge process (bail, preliminary, trial, disposition and debriefing) ie. a consistent "known face", someone distinct from the defense and the Crown Attorney and who is "there" for the victim/witnesses.

Types of Program Service: The site offices provide the following four types of service:

1. Information and Support:

- Provision of courtroom orientation.
- Explanation of legal terminology and court procedures to victim/witnesses.
- Accompaniment of the victim/witnesses to court (where appropriate) and to provide general, continuing emotional support to traumatized victim/witnesses and witnesses, most notably children and teens.
- Liaison on behalf of victim/witnesses with police, the Crown Attorney, and community agencies with regard to the case needs.
- Advises the Crown Attorney of the needs of victim/witnesses and facilitates the provision of equipment to meet special needs of victim/witnesses. For example, ensures screen is provided in the courtroom for child witness testimony, if required.
- Provision of case specific information to victim/witnesses such as court dates, bail conditions, explanations for case remands, debriefing after court reaches disposition to victim/witnesses.
- Initiation of a volunteer component to the local Victim/Witness Program where appropriate to aid in administrative and client support.

2. Referrals:

The Program assesses the needs of victim/witnesses and refers them when necessary to an appropriate community service in such areas as legal, medical, emotional, mental, and housing.

3. Community Linking:

The program actively endeavours to assist local community agencies to coordinate, develop and/or enhance community services required by victim/witnesses of crime. Specific activities include:

- Initiation of or participation in the coordination of activities for local community agencies and other government bodies: (eg. justice, social service and health agencies) as related to services for victim/witnesses of

crime.

- Development or participation in local victim/witnesses service coordinating committees to identify local service needs.
- Preparation and updating of an inventory of victim/witness services available in the community.
- Provision of public education through public speaking and brochures, to promote awareness and understanding of the criminal justice process and the Victim/Witness Assistance Program in particular.

4. Corporate:

- Provision of management information through monthly statistical reports to Head Office.
- Assistance with Ministry policy and planning to ensure that the needs of victim/witnesses are addressed in the development of ministry/government policies and operational procedures within Criminal Law and Courts Administration Divisions.

Positions at Site Office: There are four types of positions at the site offices.

1. Victim/Witness Assistance Coordinator (AM 17)

- At 13 sites across the province plus three temporary sites for special prosecutions.
- Sets up and manages the local Victim/Witness Program to meet the unique needs of the site.
- Provides direct service delivery and supervises one support staff worker and one Assistant Victim/Witness Coordinator (at 4 sites).
- Liaises with Crowns, police, court office, community on various aspects of the cases.
- Develops and monitors the volunteer program.
- Delivers public education to various community and government agencies

who are stakeholders in the criminal justice system.

- Facilitates community development of needed services to victim/witnesses of crime and ongoing linking between government and community.

2. Assistant Victim/Witness Coordinator (OAG 11)

- 4 Assistants located at Etobicoke, London, Ottawa, and Windsor.
- Performs same duties as Coordinator but is not ultimately responsible for the case.

3. Support Worker (OAG 9)

- Performs regular support work such as telephones, typing, filing, statistics etc.
- Arranges and coordinates interviews for victim/witnesses, staff, Crowns and police.
- Provides case management of domestic assault cases and other cases where necessary.

4. Volunteers

- The Victim/Witness coordinator is responsible for recruiting, training and supervising volunteers at the separate site locations. Preparation of volunteer policy and procedures and/or manuals are the responsibility of local Coordinators.
- There are approximately 150 volunteers across the province which promote the participation of the public in the criminal justice process.
- Volunteer duties, depending on site location, range from accompanying victim/witnesses to court, providing courtroom orientation, answering telephone inquiries, serving at information booths at court houses to explain the victim/witness role in the court proceedings, to providing emotional support and direction on solving practical needs of victim/witnesses.

- Volunteers are carefully screened for sensitivity, confidentiality, and their understanding of victim/witnesses and the criminal justice system. Some work full-time in related services in the community such as shelters, while others are students from colleges and universities pursuing a career in a related field.

Head Office

The staff at Victim/Witness Assistance Program Head Office are responsible for the central administration of human, financial and physical resources. They are also responsible for the provision of training courses and information packages on sexual, physical and child abuse legislative and policy advances, and caselaw on same, for Crown Attorneys across the province and to the site Coordinators. The Head Office provides ongoing support, advise and assistance to all site locations.

In addition, staff at Head Office represent the Program on all Ministry policy development related to victim/witnesses and sit on numerous inter/intra ministerial and external committees on victim/witness issues. Further, the Head Office has central responsibility for responding to all critical issues, briefings and government standing committees related to victim/witnesses of crime. As well, staff at Head Office actively participate in numerous public speaking engagements within community and government.

Staff also participate in national conferences and provide information and assistance to community groups and organizations with respect to setting up a Victim/Witness Program.

Positions at Head Office: There are five positions at the head office.

1. Provincial Coordinator (SMG 1, Regular Part-time)

- Theoretically reports to the Director of Divisional Planning, but practically reports to the Assistant Deputy Attorney General, Criminal Law.
- Responsible for the administration of budget.
- Prepares performance appraisals on head office staff and all 13 Program Coordinators.
- Represents Ministry on internal/external committees related to victim/witnesses.

- Involved in development of all Ministry policy related to victim/witnesses.
- Prepares senior management and Attorney General briefings, responds to correspondence and complaints on all victim/witnesses issues.
- Participates in public education.

2. Manager, Program Policy & Research (AM 18)

- Centrally administers the program budget.
- Assists Provincial Coordinator in the day-to-day operation of the program.
- Coordination of training sessions for Program Coordinators two times a year.
- Assists in human resourcing for the Program.

3. Counsel (Part time)

- Coordinates Crown Attorney training (plans, organizes training plus gives regular updating of Crown Attorneys on victim/witnesses issues eg. providing caselaw information on sexual, domestic assault and child abuse).
- Responds to issues, participates in committee work, and analyzes policy and legislative changes. (eg. works with the Institute for the Prevention of Child Abuse, and participates in the review of Federal Bill C-15 to determine its effectiveness by such means as questionnaires.)

4. Intern (AM 13)

- Position no longer funded after July, 1993.

5. Secretary (OAG 8)

- Regular support duties such as telephone, typing, filing.
- Preparation of support worker manual.

Policy Guidelines of Program

- 1) Services will be provided where a charge is before the court.
 - A) Clients are to be referred to police, justice of the peace or community agencies if a criminal charge has not been laid.
 - B) Services are to be restricted to the period between the laying of the charge and the final disposition of the case. This extends to advising the victim/witness of the disposition of the case.
 - C) Program Coordinators will identify appropriate cases for intervention.
 - D) The limits of the Victim/Witness Coordinator's involvements should be communicated to the client, the Crown Attorney, police and other agencies at the first available opportunity.
- 2) Program staff/volunteers will not discuss evidence at any time.
- 3) This program is designed to provide crisis intervention services. It is not intended to provide long-term therapeutic intervention.
- 4) Files will be closed after the final disposition.
- 5) Transportation services are not to be provided by the Victim/Witness Assistance Program.
- 6) Child care will not be offered.
- 7) Intensive contact with victim/witnesses and witnesses will be offered by program staff.
- 8) Written information and advice concerning victim/witnesses and witnesses to Crown Attorneys and police will be provided by Coordinators, Assistant Coordinators and Support Workers.
- 9) Access to Crown/police files is available to program staff and supervised by the Victim/Witness Coordinator.
- 10) If a question arises as to the personal safety of a victim/witness, this information will be given to the Crown Attorney in writing, immediately.

- 11) Contacts with victim/witnesses and witnesses will be restricted to telephone and office interviews (i.e. Crown or agency offices).
- 12) Program staff and volunteers will receive training, supervision, evaluation, and are obliged to sign an oath of Secrecy.
- 13) At the Coordinator's discretion, services may vary from jurisdiction to jurisdiction.

Financial Information

The Program maintains a centrally administered budget of \$1.8 million, 0.5 from Ontario Women's Directorate Sexual Assault Initiative and \$1.3 million from their Wife Assault Initiative). Based on 6,400 cases completed in the 1992/93 fiscal year, the average cost per case was approximately \$250.00.

On behalf of the Program, and supported by the ARA Consulting Group's 1991 Review, the Division has sent forward a cabinet submission to request approval for expansion of the Program to 32 additional sites over the next three to five years. Further, they have requested that the program be funded by the proposed Federal and Provincial Surcharge requirements which are estimated to yield between \$9 million and \$15 million in revenues. Expansion to provide minimal provincial service would cost approximately \$5.0 million each year with the remainder of Program funding to continue flowing from the current base at the Ontario Women's Directorate. Of note, expansion of the Program would not provide service delivery enhancements to the existing sites but would expand existing service across the province.

Collection of Program Statistics

Since the inception of the Program, each of the offices has gathered statistics relating to the Program on a manual basis. This information is recorded on the Monthly Activity Report and forwarded to Head Office at each month-end. The first section of the report provides an analysis of caseload. Beginning and month-end caseload levels are shown as well as data relating to both new cases and cases completed during the month. New cases are further analyzed between wife assault, adult sexual assault, child abuse and historical abuse. The second part of the report records selected workload indicators as well as information relating to volunteers, public education, community coordination and training.

The information contained in these reports is reviewed in Head Office by the Assistant Provincial Coordinator. However the lack of resources due to fiscal constraints has

precluded the performing of detailed analytical work.

In May 1993, testing of the Victim/Witness computer system was completed. This microcomputer case tracking system was developed by Criminal Law Division and is patterned after a similar system utilized by the Crown Attorneys. The system is being developed with multi-user capabilities. However this depends on funding available for LANS. Initially it will consist of a stand-alone system in each Program office. Staff in the Toronto area were trained in June 1993 and training in other regions is scheduled for the summer.

Information relating to individual cases will be available from the system, eg. client details, accused details, court dates, disposition etc. In addition, the system will provide reports relating to monthly caseload as well as analysis of intake. Improved caseload management will occur and requests for Program information will be responded to on a more accurate and timely basis.

Client-focused descriptions

Demographics

The majority of clients (85%) are the victim/witnesses of violent crime with the remainder being witnesses or parents of victims of other crime. Most cases involve male accused and two-thirds of the cases involve female victim/witnesses related to the accused. 85% of the clientele are female.

Priority is given to victim/witnesses of domestic assault, sexual assault and child abuse. This partly reflects the crime base and is partly in keeping with the mandate of the Ontario Women's Directorate which funds the program.

The Program serves mainly women and children of sexual and physical abuse although some degree of service, as workload permits, is provided to other victim/witnesses of crime such as the elderly, families of victims and murder victim/witnesses and /or family of victim/witnesses of drinking and driving. 85% of victim/witnesses are female.

In the past two years, special arrangements have been made to deal with multi-victim/witnesses, multi-perpetrator cases which have arisen in connection with Grandview Training School, (Kitchener), St. Joseph's (Alfred) and St. John's (Uxbridge) Training Schools, and a multi-victim/witnesses abuse case in Prescott. The St. Joseph's and St. John's cases deal with all male victim/witnesses of childhood sexual and physical abuse while the Grandview case deals with female victim/witnesses.

The charges involved in the client cases include:

1. Adult clients (76%)

- assault (37%)
- sexual assault (17%)
- threatening (7%)
- other sexual offenses (incest, indecent assault, sexual interference (6%)
- murder/attempted murder (2%)
- other (7%).

Over half of the cases can be classified as wife assault (not specific criminal code offence).

2. Child clients (24%)

- sexual abuse (20% of total cases; 84% of child abuse cases)
- physical abuse (3% of total cases; 11% of child abuse cases)
- combined sexual/physical abuse (1% of total cases; 5% of child abuse cases).

Caseloads

The Program faces high caseloads of multi-need clients who are generally in crisis. The average monthly caseload is approximately 300 cases with individual sites ranging from 93 to 449 cases. The yearly number of clients served by the program is approximately 5,700 cases. The average duration of a case ranges from 117 to 582 days. There is one Coordinator and support worker to meet the demands of the clients, Crown Attorneys, police, community and corporate head office needs at most sites (with the exception of four sites where there is an Assistant Coordinator). The Victim/Witness Coordinator has contact in-person and by telephone with victim/witnesses and families of victim/witnesses. Frequency of contact is dictated by the nature and needs of the case and geographic accessibility.

Due to an increase in the rate of violent crimes and the growing public support to prosecute violent crimes, the demand for victim/witness services is steadily growing. In 1992 the Program received approximately 7,000 new cases and completed their assistance to approximately 6,250 cases. At the end of calendar year 1992, the month end caseload for 12 offices (excluding Kitchener) rose in excess of 18%.

Specifically, for all violent Criminal Code offenses, there has been a change in the rate

of citizens charged with acts of violence from 439.7 per 100,000 in 1986 to 580.3 per 100,000 in 1990. From 1986 to 1990, the rate of adults charged increased 39% for sexual assault and 33.7% for non-sexual assault. Sexual assault and non-sexual assault represents over 90% of the violent offence charges.

Chart VW 3: Victim/Witness Program - Statistics for 12 Sites, 1992 Calendar Year

Site	Av. new cases/mo.	Av. Caseload/mo # cases	Case turnover # days
Ottawa	49	379	235
Windsor	43	387	273
Kingston	42	208	152
Kenora	18	93	152
London	57	315	168
Pembroke	16	303	582
Sudbury	38	242	194
Hamilton	69	265	117
Etobicoke	55	285	157
North York	51	368	220
Scarborough	81	378	142
Newmarket	59	449	230
Kitchener	-	-	-
Prov. Av.	48	306	218

D. CRIMINAL INJURIES COMPENSATION BOARD

Mandate and Activities

Historical Overview

The original legislation, the Law Enforcement Compensation Act, S.O. 1967, c.45, created the Board entitled the Law Enforcement Compensation Board. This Act, which came into effect in 1968, provided compensation to persons (good samaritans) who were injured while assisting peace officers in the execution of their duties.

In 1969, pursuant to the Law Enforcement Compensation Amendment Act, the mandate of the Board was expanded to provide compensation to "any person" who was injured or killed as a result of:

1. the commission of an offence against any statute of Canada or Ontario, not including an offence involving the use or operation of a motor vehicle as defined in the Highway Traffic Act but including assault by means of such motor vehicle;
2. lawfully arresting or attempting to arrest an offender or suspected offender, or assisting a peace officer therein; or
3. preventing or attempting to prevent the commission of a crime or suspected crime, or assisting a peace officer therein.

In 1971, the Compensation for Victims of Crime Act came into effect, replacing the Law Enforcement Compensation Act, and the name of the Board was changed to the Criminal Injuries Compensation Board.

Current Mandate

The current Compensation for Victims of Crime Act includes powers to award compensation that are similar to the powers included in the 1969 and 1971 Acts. Although there is regulation making authority in the Act, no regulations have been made.

At present, the Board has jurisdiction to award compensation in cases where any person is injured or killed in Ontario as the result of:

- i) the commission of a crime of violence constituting an offence against the Criminal Code (Canada), including poisoning, arson, criminal negligence and an offence under s.86 of that Act but not including an offence involving the use or operation of a motor vehicle other than assault by means of a motor vehicle;

- ii) lawfully arresting or attempting to arrest an offender or suspected offender for an offence against a person other than the applicant or his or her dependent or against such person's property, or assisting a peace officer in executing his or her law enforcement duties; or
- iii) preventing or attempting to prevent the commission of an offence or suspected offence against a person other than an applicant or his or her dependent or against such person's property.

In the above cases, compensation can be awarded to:

1. the victim;
2. the person responsible for the support of the victim; and
3. if victim was killed, the dependents.

Under s.6 of the Act, an application must be made within one year from the date of the injury, but the Board may extend the time for filing an application "as it considers warranted". Extensions are frequently requested and are granted by the Board. There is a separate process for granting extensions and this process must be completed before the application for compensation can be made. At present, all extensions are handled by the Chair.

The 1971 Act contained a provision which limited the jurisdiction of the Board to claims arising after that Act came into force. This provision was not included in the 1980 consolidation, and as a result, a policy decision was made by the Board not to approve requests for extensions in cases where the crime occurred prior to 1968, the date the Board came into existence. Recently, however, the policy has been changed and the Board will accept requests for time extensions for cases involving pre-1968 abuse. In fact, the Board is currently processing approximately 400 applications for compensation that arise out of pre-1968 cases in the St. John's and St. Joseph's Training School matters and other pre-1968 cases.

Pursuant to s.16 of the Act, a charge or conviction is not necessary, but if the matter is in the criminal justice system the Board will generally await the outcome before processing an application. Once the appeal route under the criminal code has been exhausted, a conviction is taken as conclusive evidence that an offence has occurred (s. 11).

Under s.17 of the Act, the Board can take the behaviour of the victims into account, whether or not the victim cooperated with the police, and whether or not the victim is receiving any benefit other than welfare or family assistance.

Potential outcome for client

The Board has the authority to award compensation in the following forms:

- interim compensation for maintenance, medical expenses and funeral expenses
- compensation (periodic or lump sum) for expenses, pecuniary loss, pain and suffering
- any lump sum payment cannot exceed \$25,000, and the periodic payment cannot exceed \$1,000 per month for a total of \$250,000. (These limits do not apply to good samaritans or police officers.)

Recently the Board has set a limit for the payment of lost wages which cannot exceed \$50 per day.

An application can be heard by a Board of either one or two Board members as the Chair may direct. Where an application is heard by one Board member, the applicant who is not satisfied with the initial decision may appeal the decision to a Board of two members (s.10).

Structure and Responsibilities

Organizational Structure

The organization structure of the Board is set out in the attached chart. The structure has recently been changed as the result of the Operational Review conducted by Sharon Bider in 1992 (Bider report). The Board is a independent, quasi-judicial Board that falls under the umbrella of the Finance and Administration Division of the Ministry of the Attorney General.

The Board itself is created by statute and consists of a Chair, a part-time Vice-Chair and 14 part-time members, appointed by Order-in-Council. The members are appointed for a period of three years and recently four new members have joined the Board. The training consists of a three day session conducted by the Vice-Chair, and the new members then sit in on hearings with experienced members before assuming their own caseload.

The administrative support for the Board is provided by the Ministry of the Attorney General staff members (32) who are located on the Board's premises. The Registrar is responsible for overseeing the administrative operation of the Board. Reporting to the

Registrar are the Chief of Investigations, the Manager of Compensation Claims (currently vacant), the Supervisor of Client Services (new), Supervisor of Scheduling and Orders, and the Supervisor of Financial Services.

Responsibilities of each Unit

The Board: The cases are heard by panels consisting of one or two Board members. The decision can be made after a review of the documentary materials (documentary hearing) or after an oral hearing.

Depending on need, the Board will sit in various locations throughout the province including: Toronto, London, Sault Ste. Marie, Ottawa, Sudbury, Thunder Bay, Dryden and Windsor.

Client Services Unit: The Client Services Unit consists of a filing clerk, an applications clerk, a receptionist, an inquiries clerk and the supervisor. This area is responsible for intake and assignment of applications, along with responding to client inquiries.

After the intake meeting or call, an application will be given or sent to the client unless the one year time limit has expired. If so, a separate form must be completed by the client for consideration by the Chair before any application will be considered.

The intent is that the inquiries clerk will be able to provide up-to-date information to the clients as they call in. However, the previous information system at the Board was outdated and the new system is being designed to meet the needs of the Board. The ability of the inquiries clerk to respond to all calls is limited by the information available within the system.

This unit has recently started to keep a referrals list and will refer callers to other services, such as women's shelters, rape crisis centres, etc. At this point, it is not clear how often referrals are made.

This unit is now handling a number of calls that were previously referred to the analysts. As result, the analysts are now able to spend more time on file preparation.

Board Analysts: The position of Manager, Compensation Claims is currently vacant. There are positions for six analysts, although the Board has been operating with five for a significant time period.

The role of preparing the applicant's case for hearing has been taken on by the administrative staff of the Board. Once the file is assigned to an analyst by the client services unit, the analyst is responsible for preparing the file for the Board. This involves

determining the information that will be required: the gathering of medical, dental and police reports, and analyzing the claim for pecuniary loss.

Once this information is gathered, a brief is prepared for the file. At this stage, a decision is made as to whether the file can proceed by way of documentary hearing instead of an oral hearing. Under the Act, the Chair shall refer the matter to a Board of one or two members for a hearing, as the Chair may direct. Recently there has been a move to have a large number of applications proceed by "documentary hearing" rather than oral hearing. According to the Board, the more complex cases are referred to oral hearings.

Investigations Unit: The application passes through this unit initially so that the request can be made for the police report. This unit makes the initial request for the police report by sending out a questionnaire developed by the Chief of Investigations. The file then goes back to the analyst, and once the analyst has prepared a file, it is forwarded to this unit for investigation, if required.

The main purpose of the investigation is to determine the circumstances surrounding the crime, and to determine whether: the behaviour of the victims contributed to the injury; the victims refused reasonable co-operation with the police; and the offence was reported promptly to the police. The investigators may decide to speak with the police, any witnesses, the victims and the alleged or convicted offender.

There are three full time investigators assigned to the Board, and one investigator on secondment. The Chief of Investigations also conducts investigations. They are located in Leamington, Kitchener, Metro Toronto and Westport, and cover various areas of the province. In the 1992-93 fiscal year, 952 investigations, including periodic reviews as well as new applications, were completed. This is an average of 250 applications per investigator.

Financial Services: The Supervisor of Financial Services deals with the implementation of Board order, the statistics for the Board, and all financial matters of the Board. This staff member has close contact with the Finance and Administration Branch of the Ministry of the Attorney General.

The supervisor liaises closely with the Finance and Administration Division of the Ministry of the Attorney General since all cheques, including lump sum and periodic payment cheques (but not disbursement cheques for reports, etc.) are issued from that office.

Scheduling: Once the file has been prepared by the analyst and investigated, as required, by the investigations unit, it is ready to be scheduled for either a documentary hearing

or an oral hearing. It is the practice of the Board to wait until the file is "ready" or all reports and background information gathered and the investigation completed, if required, before scheduling the hearing.

Chart CICB 1: Current Organizational Structure

1990 C.I.C.B. ORGANIZATION STRUCTURE

ORGANIZATION CHART

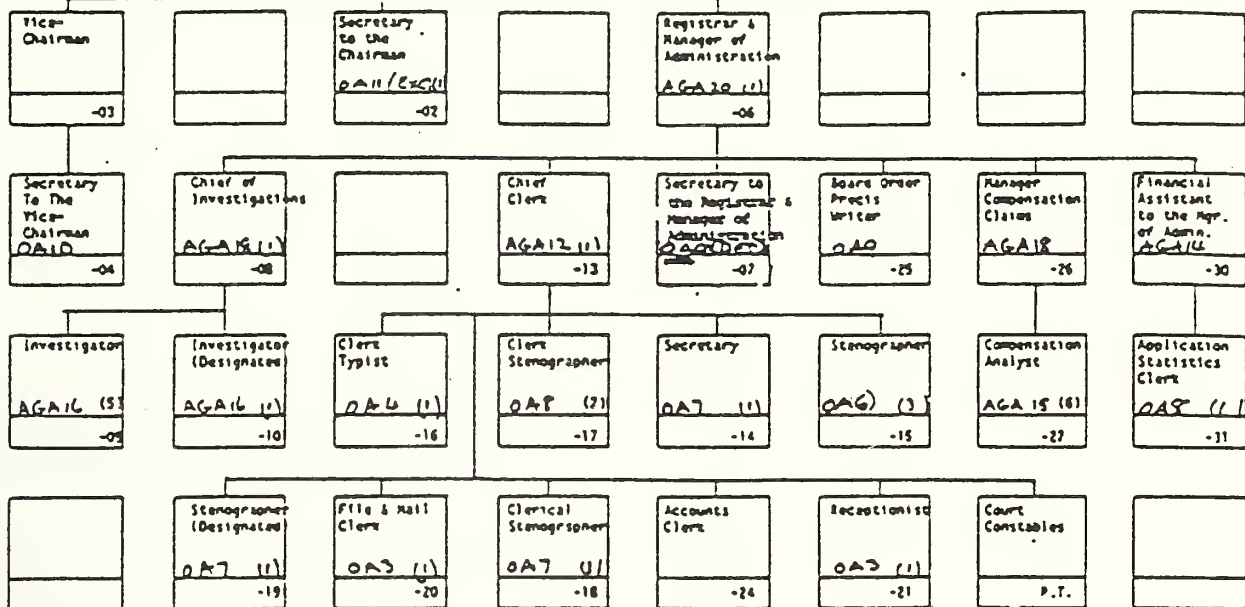
Prepared by: G. Stehli
 Approved by: J. J. Stehli
 Supervised: J. J. Stehli

Date: March 9, 1990
 Date: April 4, 1990
 Date: September 15, 1987

Chairman
 02-9210-01

To Chart: 02-0110
 Position: 02-0110-01
 Location: Toronto 69501

Chart No: 02-9210
 Dept: Attorney General
 Division: Criminal Injuries Compensation Board



Form C.S. 171
 7340-1080

(Actual Reporting Relationships as at
 March 15, 1992)

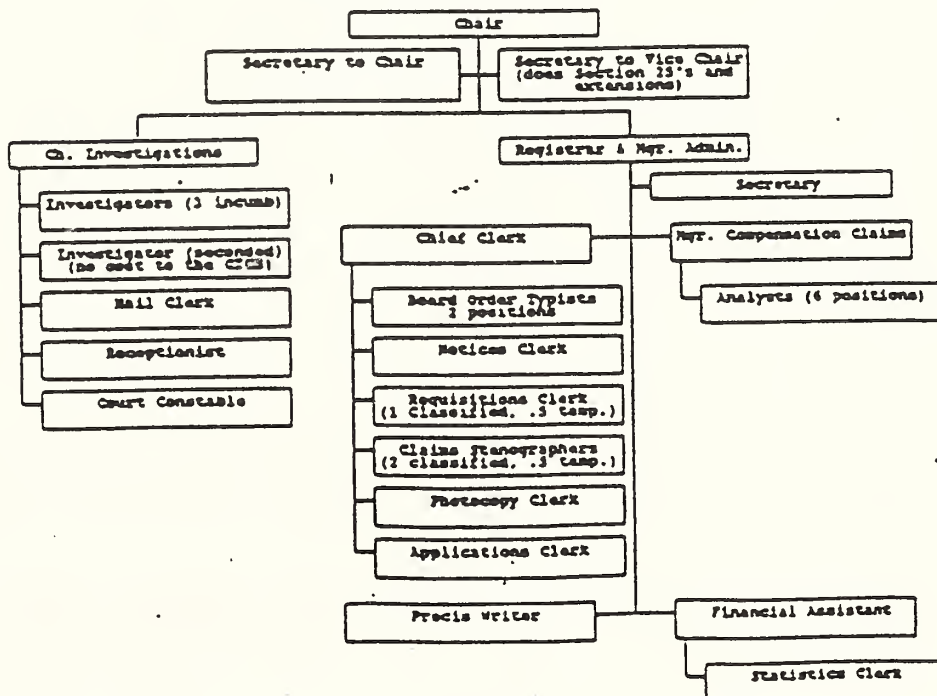
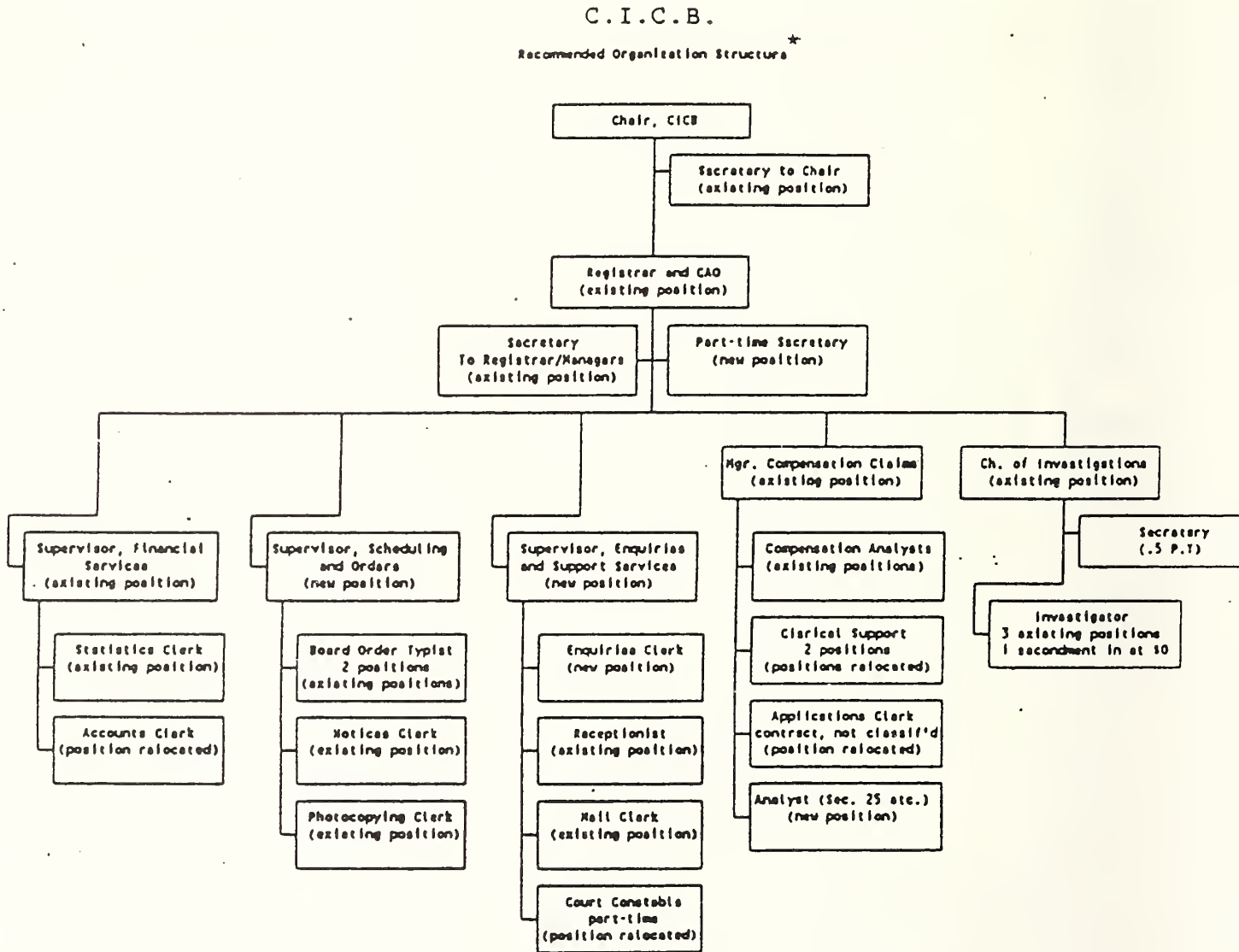


Chart CICB 2: Recommended Organizational Structure



* Recommended in the Bider report, 1992

Budget: The 1992-93 budget for the Board was \$14.778 million of which approximately \$2 million was devoted to administrative costs. Prior to the 1992-93 fiscal year, a payment of approximately \$2.5 million was made by the federal government to the provincial government each year as a contribution to the cost of the program. This payment was terminated in 1992 and all of the funding for the Board now has to be found at the provincial level.

As noted above, the Board is also processing an estimated 400 applications relating to abuse in provincial institutions, in particular, St. John's and St Joseph's Training Schools. The applications are being handled by the Board as the result of a tripartite agreement with the Ministry of the Attorney General, the Christian Brothers and the victims. The applications are dealt with separately from other Board applications and a separate budget (currently being reviewed) has provided funding for the awards along with two full-time staff members and two Board members to process these applications. The Chief of Investigations, who is funded by the regular budget of the Board, has also spent a significant period of time on these applications.

Reviews: The Board has had several reviews in the past including the Thorne Stevenson and Kellogg Organizational and Operational Review (TSK) in 1986; the report entitled Victims of Crime in Ontario prepared in June, 1991, by The Advisory Board on Victims' Issues; the report to develop a business model for the CICB initiated in November, 1991; and the Bider report dated May, 1992. The Policy Development Division of the Ministry of the Attorney General is also currently reviewing the Board.

Client Focused Descriptions

Given the mandate of the Board, the potential clients of the Board are all victims of violent crime in Ontario. For 1992, an estimated 105,007 charges were laid relating to the main categories of violent crimes in Ontario. As approximately 3500 cases are received by the Board each year (the 1991-92 figure is 3506 and the 1992-93 figure up to February, 1993 is 3085), it is estimated that less than 4% of eligible clients are actually clients of the Board.

Many of the Board's clients have been described as "vulnerable", especially at the time of the application, by both internal and external contacts, in that they have been victims of some type of violent crime, including childhood abuse and sexual assault.

In a recent random sample of 299 cases (up to November, 1992) reviewed by Policy Development Division, 243 (81.3%) were filed by the victims, eight (2.7%) were filed

by the survivor of the victims, and 48 applications (16.1%) were filed by the person responsible for the support of the victims. Male victims accounted for 61.3% of the applications and female victim/witnesses accounted for 38.7%.

In this sample reviewed by the Policy Development Division, 58 of the applicants (19.4% of the 299 applicants) had no income; 23 (7.7%) had incomes under \$10,000; 46 (15.4%) had incomes between \$10,000 - \$25,000; 36 (12.0%) had incomes between \$25,000 - \$50,000; one (0.3%) had an income over \$50,000; and the income status of the remaining 135 applicants was uncertain.

The breakdown of offenses within this case sample was as follows:

Minor assaults:	87 (29.1%)
Offenses specific to police:	9 (3.0%)
Sexual Assaults:	29 (9.7%)
Intermediate Assaults:	70 (23.4%)
Child Abuse Offenses:	37 (12.4%)
Serious Assaults:	61 (20.4%)
Other:	6 (2.0%)

The 1992-93 statistics available from the Board (up to February, 1993) show that during that period, the largest number of applications were received on behalf of sexual assault victim/witnesses (936 of 3085). As a result, sexual assault now accounts for approximately 30% of the caseload of the Board. Six hundred and thirty-five of these applications involved child abuse.

Although the Act provides for compensation to peace officers, only 133 of the 3085 (4.3%) received by the Board in 1992-93 were filed by peace officers. (Also, only 4.3% of the 1991-92 applications involved resisting arrest and assaulting a peace officer.)

Statistics on the breakdown of applicants by race were not available. However, Board members have suggested that there are a number of groups not represented in applications before the Board. Although recent appointments to the Board have been made in keeping with employment equity principles, no formal steps have been taken to ensure that the Board is reaching out to all potential applicants in Ontario.

Over the 1992-93 fiscal year, 1918 hearings (oral and documentary) were heard in Toronto, 91 in London, 47 in Ottawa, 13 in Thunder Bay, 13 in Sault Ste. Marie, 24 in Sudbury, and 41 in Windsor.

E. OFFICE OF THE OFFICIAL GUARDIAN

Mandate and Activities

The following organizational description of the Office of the Official Guardian was included in the Briefing Paper (April 22, 1993) prepared by the Office for its Strategic Review of Personal Rights Delivery of Services and provides a good summary of the services provided by the Office:

Background

The origin of the Office of the Official Guardian can be traced back as early as 1827 when the Lieutenant Governor and the Lord Chancellor of Upper Canada exercised jurisdiction over the estates of infants and those unable to manage their own affairs. From time to time, the Lord Chancellor appointed a leading member of the Bar to be the Official Guardian ad litem of children and mental incompetents who needed representation of their interests in Court. In 1881 the first Judicature Act formally recognized the Official Guardian Ad Litem who practices today in an independent law office within the Ministry of the Attorney General. The Official Guardian is appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General (section 89(1) Courts of Justice Act). Due to the origin of the Office, the eight or nine Official Guardians appointed throughout the years have maintained a close working relationship with the Bench and Bar.

The Official Guardian, Willson McTavish, and a staff of twenty lawyers, thirteen social workers and seventy-one administrative support staff in Toronto provide legal and social work services for children. The lawyers represent children's personal and property rights interests in various areas of law including civil litigation, child custody and access disputes and child protection proceedings. The social workers prepare social work reports for filing in court and assist the lawyers. A more detailed description of these areas is provided below.

The Official Guardian also provides representation before administrative tribunals including the Criminal Injuries Compensation Board, the Mental Health Review Board in connection with treatment hearings in mental health facilities, and the Child and Family Services Review Board concerning the detention of children who may be mentally ill.

Since 1987 under the Mental Health Act, the Official Guardian acts as a substitute decision-maker of last resort for mentally incompetent patients who require psychiatric

and other related medical treatment and have no other persons to act on their behalf.

Personal Rights

Child Custody & Access: *Child custody and access is one of the most difficult issues that confronts family law lawyers and the Bench. It is a private dispute. Once custody and access have been decided it is often easier for collateral issues such as the division of property and support to be determined. It is now widely accepted that in the most difficult custody/access cases it is important to ensure that a child's rights and welfare are protected and that all relevant evidence including views and preferences or wishes ... of a child, is brought before the Court. Accordingly, Court appointment of the Official Guardian to provide a child with independent legal representation has increased over the past several years. It appears now to have stabilized.*

Orders authorizing the Official Guardian to act for children in custody and access proceedings are made under the authority of section 89(3) of the Courts of Justice Act. It says:

The Official Guardian shall act as litigation guardian of minors and other persons where required by an Act or the rules of court, and in other cases may be authorized by a court to so act. 1984, c.11, s.102(3); 1989, c.55, s.11.

In-house lawyers and law students from the Office of the Official Guardian and a special panel of lawyers across Ontario represent children in custody and access disputes under the Children's Law Reform Act and the Divorce and Corollary Relief Act in the Ontario Court (General Division) and in the Ontario Court (Provincial Division) on motions for interim relief and at trial.

There is extensive interaction by them with family members, psychologists, psychiatrists, social workers, school officials and other persons who may have relevant information about the child-client. The lawyers and law students have access to the support services of in-house social workers to assist them.

The lawyers also provide legal advice to minor parents and children over the age of seven whose consent to an adoption is required under the Child and Family Services Act.

Social Workers - Official Guardian's Reports: *Orders requesting Official Guardian's Report are made under s. 112 of the Courts of Justice Act. It says:*

112(1) In a proceeding under the Divorce Act (Canada) or the Children's Law Reform Act in which a question concerning custody of or access to a child is before the court, the Official Guardian may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education.

Staff social workers are also available to assist the lawyers and law students in representing children in certain cases. Social workers are helpful in fact-finding and interviewing children, parents and collateral persons such as physicians, teachers and extended family members. In addition, social workers provide their opinions and observations concerning the interests of a child. In the context of court proceedings, oral or affidavit evidence of a child's views and preferences or wishes is sometimes given by Official Guardian social workers.

However, the main duty of the social workers and the 65 social worker agents across the province is to investigate and prepare and file an Official Guardian's Report with the Court after a Court order is made requesting the Report. This must be accomplished within 60 days of the serving and filing by the Official Guardian of a Notice of Intention to Investigate (Rule 70.16(1)). The social workers carry out extensive interviews and usually make recommendations to the Court about the custody and access of children. They may be called as witnesses and are subject to cross-examination on their Report.

Social workers become involved in very few child protection and property rights cases and only in exceptional circumstances.

Child Protection: In Child Protection cases, the Official Guardian provides independent legal representation for children in protection proceedings under the Child and Family Services Act. Children may be in need of protection for many reasons, including physical and sexual abuse and neglect, and therefore may be removed from their families by a Children's Aid Society through Court Order. It is a public dispute requiring the intervention of the state.

Orders authorizing independent legal representation are made under s.38 CFSA. It says:

(1) A child may have legal representation at any stage in a proceeding under this Part.

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

(a) shall, as soon as practicable after the commencement of the proceeding; and

(b) may, at any later stage in the proceeding, determine whether legal representation is desirable to protect the child's interest.

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

(4) Where,

(a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be made a society or Crown ward under paragraph 2 or 3 of ss. 57(1);

(b) the child is in the society's care and,

(i) no parent appears before the court, or

(ii) it is alleged that the child is in need of protection within the meaning of clause 37(2)(a), (c), (f) or (h); or

(c) the child is not permitted to be present at the hearing,

legal representation shall be deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes if they can be reasonably ascertained, that the child's interests are otherwise adequately protected.

(5) Where a child's parent is less than eighteen years of age, the Official Guardian shall represent the parent in a proceeding under this Part unless the court orders otherwise. 1984, c.55, s.38.

When a Judge orders under s. 38 of the Child and Family Services Act that a child have legal representation, counsel is provided to the child through the Official Guardian in coordination with the local Legal Aid Directors outside Metropolitan Toronto by delegating cases to approximately 500 members of the private Bar across Ontario. This panel of specially trained lawyers is empanelled every two years, the last empanelment being in 1991. Many of the more difficult complex cases such as ritual abuse, drug-addicted newborns and challenges under The Charter of Rights and Freedoms, judicial reviews, and appeals are handled by in-house counsel.

Secure Treatment Program: A special panel of lawyers and in-house counsel represent children before the Child and Family Services Review Board and Judges of the Ontario

Court (Provincial Division) when, because of mental illness, a child must be detained for psychiatric treatment.

Substitute Decision Maker and Legal Representative for Mental Patients: The Official Guardian is the substitute decision maker of last resort for psychiatric patients in mental health institutions and is also the legal representative of last resort for them before the Mental Health Review Board and the courts concerning capacity and psychiatric treatment plans. If the Official Guardian is the substitute decision maker, the Public Trustee, by protocol, will act as legal representative of last resort.

Property Rights

The Property Rights cases consist mainly of personal injury and estates litigation involving the interests of children and the unborn. The personal injury litigation includes complex medical malpractice cases, products liability and motor vehicle actions, many of which involve large monetary claims. The Official Guardian becomes involved in actions in several ways such as by Court appointment as litigation guardian for the child (Rule 7.04), or by institution of an action without court order in circumstances where the parent or guardian is unwilling and unable to pursue a claim (Rule 7.03). In addition, the Office reviews proposed settlements involving minors where referred by the Court and either has no objection to the settlement or contests it on the basis that it is not in the best interests of the child (Rule 7.08).

Estate and trusts litigation encompasses a wide variety of issues such as will interpretation questions, applications for removal of Executors and Trustees, Succession Law Reform Act applications for support, questions arising from the division of property under the Family Law Act, payments into and out of court on behalf of minors, applications under the Variation of Trusts Act and applications concerning the disposition of property of minors. Under the Rules of Civil Procedure and the Estates Act, the Office is involved in the review or audit of estate administration accounts of personal representatives where a minor and/or an unborn child has a vested or future interest in the estate. Counsel attends on the appointment and makes any necessary representations in connection with the accounts.

Five in-house counsel are actively involved in various aspects of the civil and estate litigation files including preparation of pleadings and other related documentation, attendance at motions, discovery, and at trial. Outside Metropolitan Toronto the Office retains lawyers as agents in the court regions of Ontario to provide representation in these property rights cases.

Mission Statement

The following is the Office of the Official Guardian's formal Mission Statement:

As provided for at Law, the Office of the Official Guardian investigates, advocates, protects, and represents in proceedings before the Courts and Tribunals of Ontario, the Personal and Property Rights and obligations of persons, usually minors, under a disability at law.

Accountability

The Office of the Official Guardian is an independent law office within the Ministry of the Attorney General. The Official Guardian is appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General (Courts of Justice Act, s.89(1)). Administratively, the Official Guardian reports to the Assistant Deputy Minister, Civil Law Division of the Ministry of the Attorney General.

Structure and Responsibilities

Structure

The organizational structure is set out in the attached organizational charts. By way of summary, the Official Guardian's in-house personnel consists of seventy-one administrative staff, twenty lawyers, nine law students, and thirteen social workers. The lawyers carry caseloads in both personal and property rights cases in the Judicial District of York and also administer and manage, on a court regional basis, the delivery of services across the province. The 510 panel lawyers and 65 social workers are authorized by the Official Guardian to undertake services in "personal rights" cases on a case by case basis throughout the province. With respect to property rights cases, in addition to five in-house counsel, the Office retains the services of 50 agent and 29 sub-agent lawyers throughout Ontario.

Chart OG 1: Office of the Official Guardian - Organizational Structure

ORGANIZATION CHART

Prepared by: C. Madigan Date: March 9, 1992
 Approved by: [Signature] Date: March 16, 1992
 Supersedes: H. Wetick Date: July 1989


Official Guardian
 02-6611-01

To Chart - 02-5510
 Position - 02-5510-01
 Location: Toronto - 69501

Page 1 of 4
 Chart No: 02-6611 to 02-6691
 Dept: Attorney General
 Division: Civil Law
 Branch: Official Guardian
 Section:

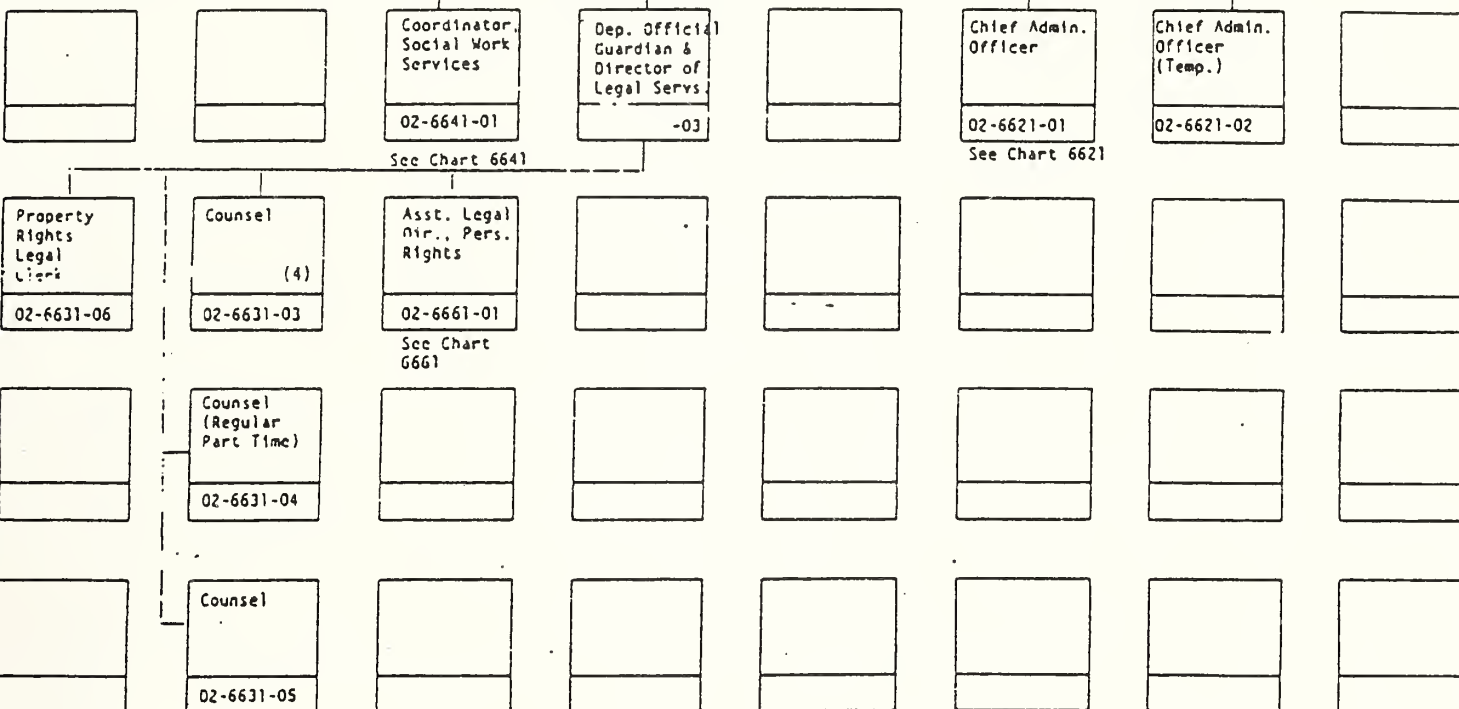


Chart OG2: Office of the Official Guardian - Organizational Structure

Page 2 of 4

ORGANIZATION CHART

Prepared by: C. Madigan Date: March 9, 1992
 Approved by: Alan McArthur Date: March 16, 1992
 Supersedes: R. Wexick Date: July 1989

Assistant
Legal Director
Personal Rights
02-6661-01

To Chart - 02-6611
 Position - 02-6611-01
 Location: Toronto, 69501

Chart No: 02-6661
 Dept: Attorney General
 Division: Civil Law
 Branch: Official Guardian
 Section: Personal Rights

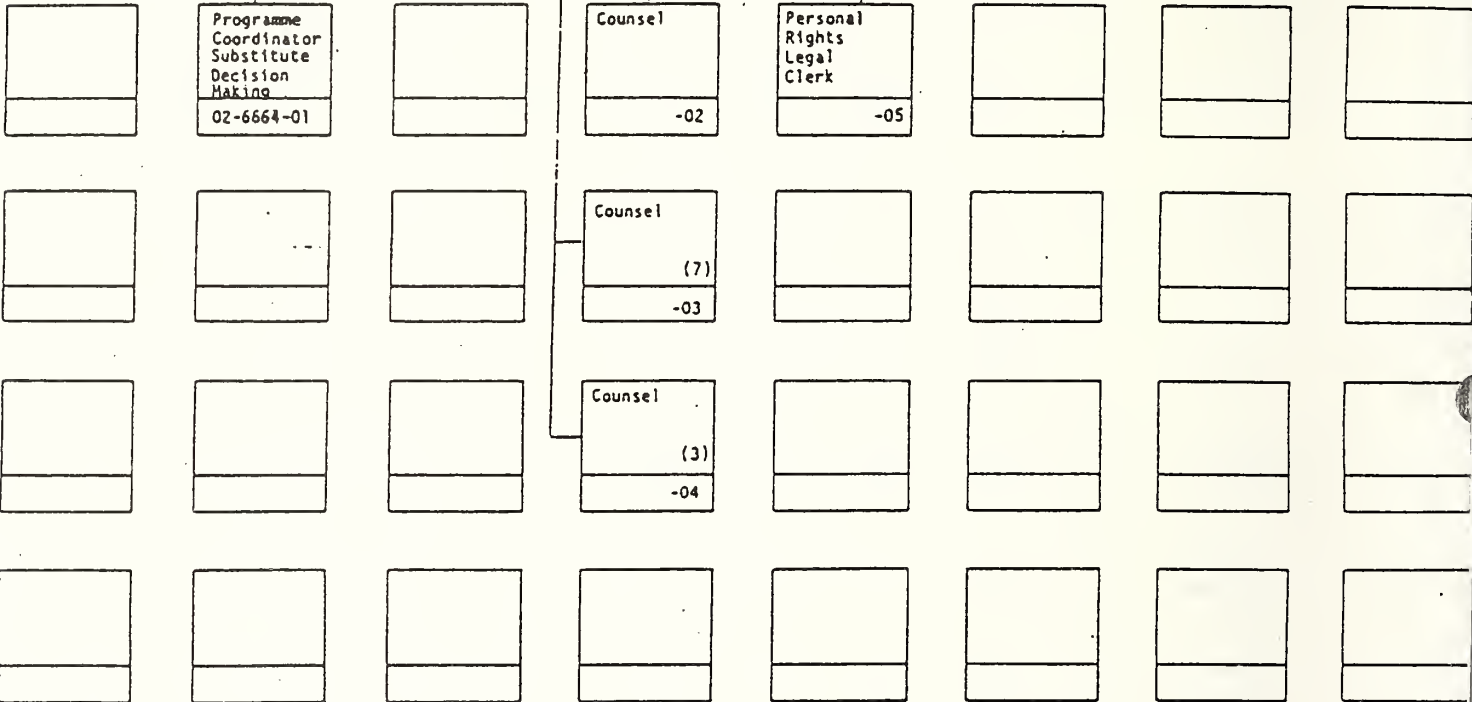


Chart OG3: Office of the Official Guardian - Organizational Structure

Page 3 of 4

ORGANIZATION CHART

Prepared by: G. Madigan Date: March 9, 1992
 Approved by: [Signature] Date: March 16, 1992
 Supersedes: R. Westick Date: July 1989

Coordinator
Social Work
Services
02-6641-01

To Chart - 02-6611
 Position - 02-6611-03
 Location: Toronto, 69501

Chart No: 02-6641
 Dept: Attorney General
 Division: Civil Law
 Branch: Official Guardian
 Section: Social Work Services

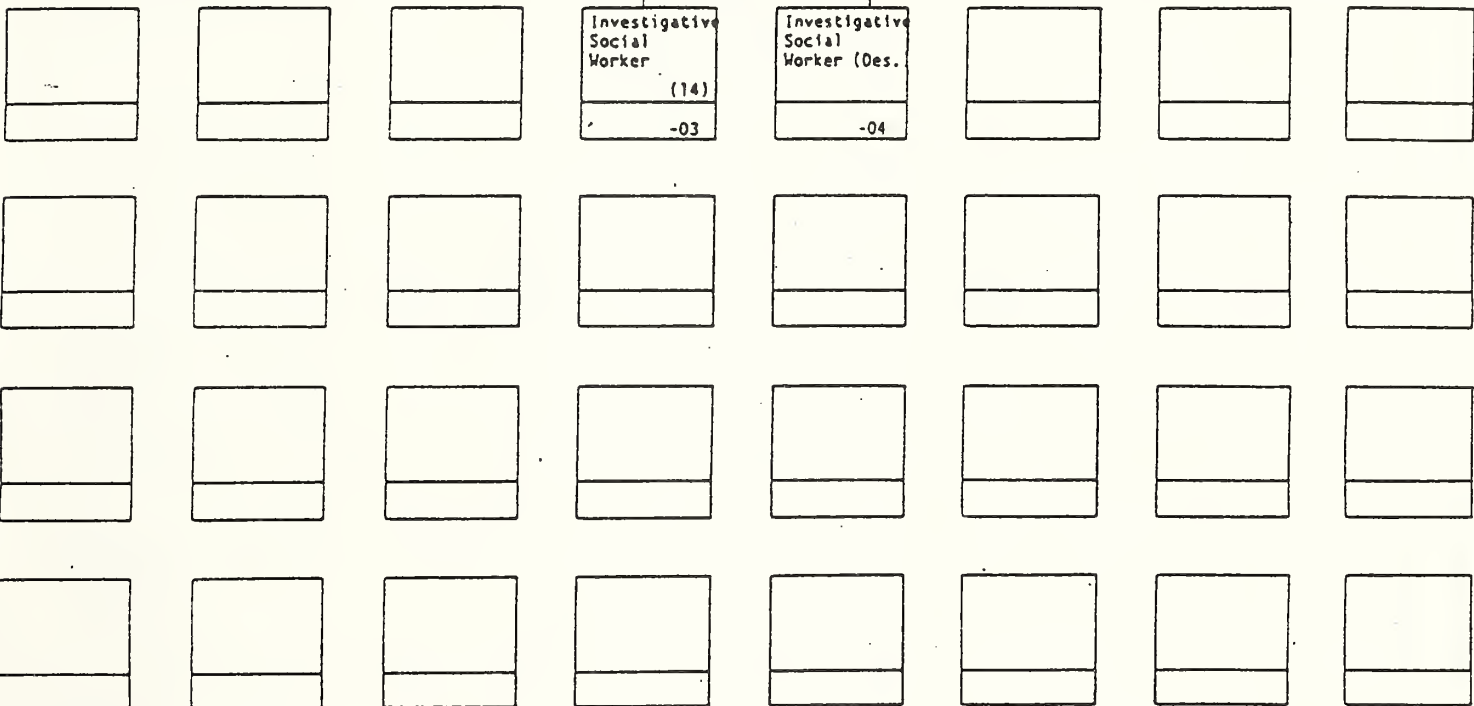


Chart OG4: Office of the Official Guardian - Organizational Structure

Page 1 of 4

ORGANIZATION CHART

Prepared by: /C. Madigan Date: March 9, 1992
 Approved by: V. McLaughlin Date: March 16, 1992
 Supersedes: R. Wetick Date: July 1989

Chief Admin.
Officer

02-6621-01

To Chart - 02-6611
 Position - 02-6611-01

Location: Toronto 69501

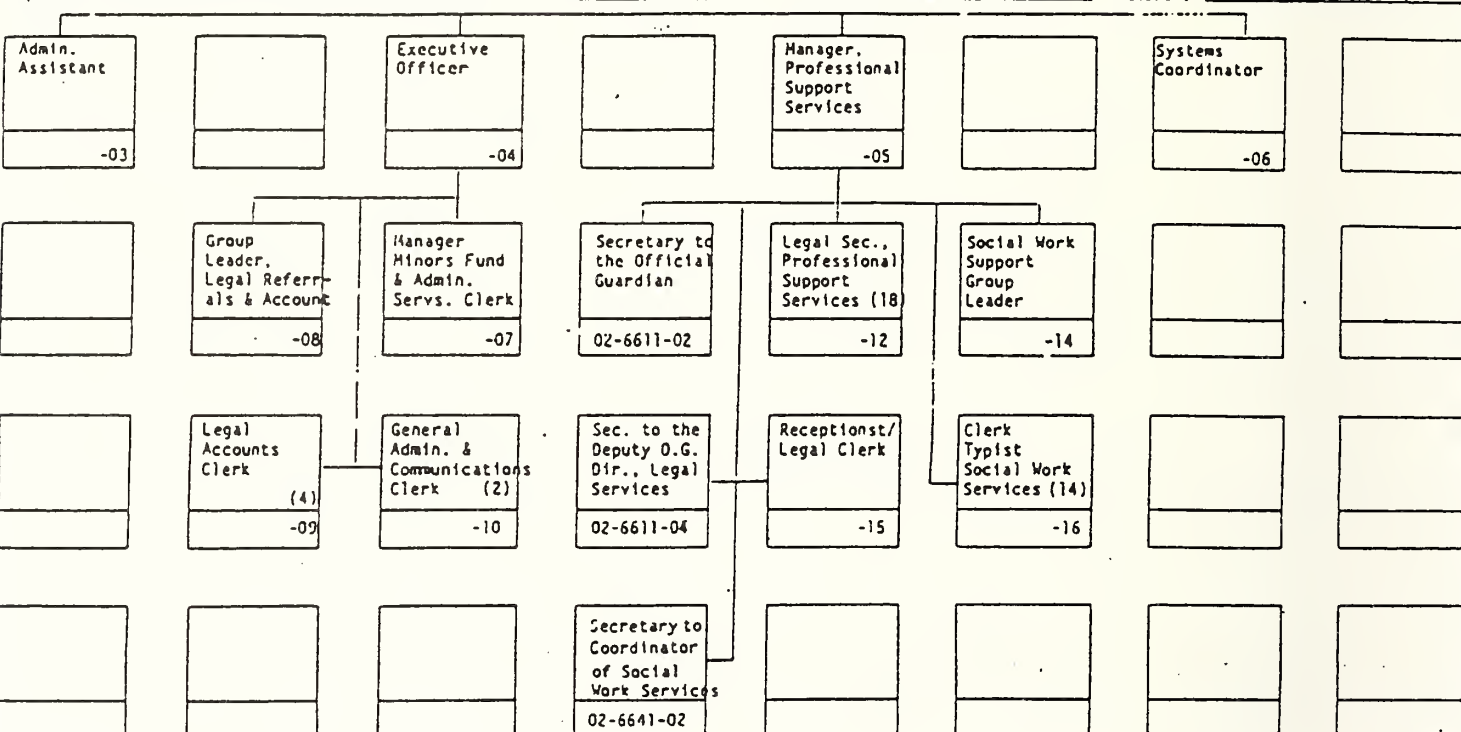
Chart No: 02-6621

Dept: Attorney General

Division: Civil Law

Branch: Official Guardian

Section: Finance & Administration



Budget

An overview of the budget was included in the Briefing Paper (April 22, 1993) prepared by the Office for its Strategic Review of Personal Rights Delivery of Services and is set out below:

<i>Salary and Wages</i>	<i>\$ 5.4 million</i>
<i>Open Ended Entitlement</i>	<i>\$ 5.8 million</i>
<i>Other ODOE</i>	<i><u>\$ 0.6 million</u></i>
<i>TOTAL</i>	<i>\$11.8 million</i>

Managed Savings Strategy 1992-93: As part of the Managed Savings Strategy implemented by Treasury Board, there was a reduction to the Official Guardian's Other Direct Operating Expenses (ODOE) of 4.9% or \$330,000.00. Consequently, every line item in the 1992-93 budget under "other ODOE" was reduced to the bare minimum. The rate of expenditure for all items (except the open ended entitlement in personal rights cases) was significantly reduced and it is expected that the target should be reached. The Office at 393 University Avenue has been operating on a very thin budget. There has been an expenditure for computer equipment costing \$150,000 to improve efficiency which should have a positive impact in future years.

"Open Ended Entitlement": In fiscal year 1991-92 the ODOE professional fees and expenses for Personal Rights was designated by Treasury Board as an "open ended entitlement". The annual expenditure for this budget line item has been increasing yearly. In 1984-85 the budget was \$1.5 million and in 1991-92 had risen to \$5.6 million. For 1992-93 it is projected that \$8.9 million will be expended, \$3.1 million over the budget of \$5.8 million.

Client-Focused Description

As discussed earlier, the Office of the Official Guardian protects the legal rights of persons under a disability at law, usually minors. In addition to minors, the Office has responsibility for representing psychiatric patients before the Mental Health Review, as well as mentally incompetent persons, absentees and unborn and unascertained persons in certain property rights cases.

Other than for caseload, the Office does not have statistics with respect to clients. It has not kept statistical information with respect to, for example, age, sex, race or cultural background of clients or with respect to the number of different types of clients.

Information with respect to caseload is summarized below:

Chart OG 2: Personal Rights Cases - Legal Representation

	<u>88/89</u>	<u>90/90</u>	<u>90/91</u>	<u>91/92</u>	<u>92/93</u>
Custody/Access Representation					
York	465	482	500	468	393
North	94	121	130	127	132
Central West	148	188	246	259	247
Central East	240	303	344	321	301
East A	90	100	101	87	105
East B	99	91	141	102	104
South West	174	107	206	201	154
Central South-A	178	209	241	196	152
Central South-B	214	215	280	342	237
Total	1702	1816	2189	2103	1825

Child Protection Representation

York	617	508	556	432	350
North	225	196	244	232	202
Central West	153	128	152	147	133
Central East	258	215	266	281	225
East A	235	205	205	191	162
East B	204	150	153	160	168
South West	266	256	286	314	283
Central South-A	130	118	124	158	128
Central South-B	184	152	154	158	173
Total	2272	1928	2140	2073	1824

	<u>90/91</u>	<u>91/92</u>	<u>92/93</u>
Minor Parent [representation of a minor parent in child protection proceeding]		24	138
Rule 9a [representation of party under a mental disability in child protection proceeding]	9	21	17
Secure Treatment Facility Admission	185	210	192
Criminal Injuries Compensation Board		19	7
Adoption Proceedings [legal advice to minor parents and children over 7 whose consent to adoption is required]		34	97
Social Work Assists		125	115

Chart OG 3: Personal Rights Cases - OG Reports

	<u>1991/92</u>		<u>1992/93</u>	
	<u>Received</u>	<u>Assigned</u>	<u>Received</u>	<u>Assigned</u>
York	158	150	334	160
North	72	69	154	91
Central West	109	101	204	111
Central East	161	155	230	123
East A	22	17	53	27
East B	92	85	111	68
South West	17	16	23	12
Central South A	40	34	92	49
Central South B	74	71	77	38
TOTAL OGR FILES	745	698	1278	697

Chart OG 4: Property Rights Legal Representation

Property Rights Cases

	<u>1992</u>
York	358
North	44
Central West	80
Central East	75
East	78
South West	38
Central South	78
TOTAL	751

Additional information, prepared for the OG's Strategic Review, with respect to personal rights caseload is attached.

Chart OG 5: Historical Intake Trends

*OFFICE OF THE OFFICIAL GUARDIAN
STRATEGIC REVIEW PERSONAL RIGHTS
DELIVERY OF SERVICES*

HISTORICAL INTAKE TRENDS

	OFFICIAL GUARDIAN REPORTS	CUSTODY/ACCESS	CHILD PROTECTION
1987/88	213	1,693	5,268
1988/89	325	1,702	4,563
1989/90	573	1,816	4,268
1990/91	737	2,189	4,621
1991/92	694	2,103	2,073
1992/93	542	1,825	1,824

Chart OG 6: Case Information

OFFICE OF THE OFFICIAL GUARDIAN STRATEGIC REVIEW PERSONAL RIGHTS DELIVERY OF SERVICES

<u>PROGRAM</u>	<u>AMOUNT EXPENDED</u>	<u>CURRENT ACTIVE CASES</u>
○ OFFICIAL GUARDIAN REPORTS	\$ 466,822	418
○ CHILD PROTECTION	4,658,440	5,398
○ MINOR PARENTS/ ADOPTION CONSENT	62,436	108
○ SECURE TREATMENT	72,469	251
○ MENTAL HEALTH	12,710	155
○ CUSTODY/ACCESS	3,310,270	6,081
TOTAL	\$ 8,581,191	12,411

Chart OG 7: Case Averages

OFFICE OF THE OFFICIAL GUARDIAN STRATEGIC REVIEW PERSONAL RIGHTS DELIVERY OF SERVICES

CASE AVERAGES

BASED UPON 890 CLOSED FILES FROM 1991

	CUSTODY ACCESS	CHILD PROTECTION	OFFICIAL GUARDIAN REPORT
AVERAGE CASE LENGTH/MONTHS	10	12	4
AVERAGE CASE COST	\$1,026.26	\$1,379.48	\$940.31
AVERAGE NUMBER OF INVOICES	1.5	2	1.25
AVERAGE COST PER INVOICE \$	719.96	\$ 692.12	\$759.31

F. THE OFFICE OF THE PUBLIC TRUSTEE

Mandate and Activities

The Office of the Public Trustee (the Office or the PT) is one of the largest offices of its kind in the world. Measured by the number of trust administration clients and the value of client assets under administration, it appears that the office would rank third behind only the public trustee of New Zealand and the public trustee of England and Wales in size. In general terms the PT has responsibility for managing as a last resort the financial affairs of incompetent adults, administering estates of individuals who die intestate and without heirs, providing consent to medical treatment for certain incompetent adults, supervising charitable property, and providing certain trust functions to escheat corporation and cemeteries. From the perspective of breadth of statutory responsibility, the PT has probably the most diverse statutory responsibilities of any office of public trustee in the common law world. For example, neither the public trustee in England or New Zealand appear to have responsibility for charitable property, cemeteries or escheat corporations.

Historical Perspective

The first public trustee office was established in New Zealand in January 1873. At the time colonial administrators were experiencing considerable difficulty in finding people willing and able to act as trustees. Numerous instances of breach of trust were reported and it was felt that the availability of a public agency would prevent such occurrences in the future. Once the office opened, it was used extensively and in 1912 it became involved in the management of the estates of the aged and infirm persons who were deemed incompetent. A public trustee office was established in England in 1906, in order to resolve similar problems to those encountered in New Zealand - the lack of suitable private trustees and the relative absence of safeguards for beneficiaries against fraudulent misappropriation.

Prior to the establishment of public trustee offices in Canada, arrangements were made for the state to administer the property and affairs of the insane. If an individual was admitted to an asylum or hospital for the insane, but did not have a committee or guardian, the estate would be administered automatically by either a government official or the superintendent of the asylum or the hospital. The process became known as "statutory guardianship". The term is still used to describe the outcome of the medical certification process and other procedures whereby the Public Trustee assumes control of the estate.

In Canada, the first public trustee office was established in Ontario in 1919 pursuant to the Ontario Public Trustee Act of 1919 (the Original Act). To fully understand the current role and responsibilities of the office, it is helpful to have , from a legislative perspective, a sense of how the office has evolved.

Statutory Framework

As originally conceived and this has continued, the office has enjoyed a significant degree of independence in decision making. Pursuant to ss.6(2) of the Original Act, the Public Trustee was to be a corporation sole under that name with a perpetual succession and an official seal. In addition, the Public Trustee was given authority to sue and be sued in the same manner as any other corporation sole. This has continued in the current Public Trustee Act (the Current Act).

One might also suggest that as originally conceived the office was given significant independence at an operational level as well. Pursuant to s.14 of the Original Act, the Public Trustee was given authority to charge in respect of duties or otherwise and to recover expenses that might be retained or paid out of trust property, as if the trustee were private. Generally the same authority is to be found in s.8 of the current Public Trustee Act.

Pursuant to ss.14(1) and (2) of the Original Act, provision was made for all monies received from fees, charges and reimbursement of expenses in the Office of the Public Trustee to be paid into a special fund, and for the payment out of such fund of the salaries and other remuneration and the expenses of the Public Trustee and the officers, clerks and servants in his office. Essentially these provisions have survived in the Current Act as ss.9(1) and (2).

In addition, provision was made to use surplus funds to establish, pursuant to regulations, an insurance fund against loss. Pursuant to ss.14(3) provision was made for the Lieutenant Governor in Council to pay monies coming to the hand of the Public Trustee under the Crown Administration of Estates Act to the credit of the same fund. Pursuant to ss.14(4) the Lieutenant-Governor in Council was given authority to direct payment from time to time, of the balance of the fund into the Consolidated Revenue Fund. Again ss.9(3) and (4) of the Current Act.

Regulations were promulgated to bring the statutory regime into being. Initially, it would appear -and seemingly until at least the 1940s - the office in fact functioned as the Original Act would have appeared to have assumed. Salaries and other expenses were paid directly by the office and the surplus, if any, was remitted to the Consolidated Revenue Fund.

While there is no clear recollection of when a material change in this arrangement occurred, changes to regulation 229 pursuant to the Original Act in 1944 certainly appeared to contemplate that future payments of revenues raised by the PT would be paid directly to the Consolidated Revenue Fund (CRF) and that the payment of most expenses, including salaries, would come from CRF.

In discussions with internal informants it was suggested that the decision to have salaries paid out of the CRF was related to the interest of employees to be classified as public servants. Whatever the rational, it is clear that at some point the PT was transformed from being a relatively independent administrative entity into a branch much like any other branch of the Ministry of the Attorney General.

[While not a central point, the financial statements of the PT which are contained in the annual report of the PT may not fully reflect this relationship of dependence. Note 3 to the financial statements suggests that all operating expenses of the PT are paid from the PT Administration Fund. In fact, as noted above, this does not appear to be the case.]

In the history of the office, there have been ten Public Trustees. [K.W. Wright, F.H. Keefer, A.N. Middleton, A. Racine, J.W.G. Thompson, S. Winkler F.J. Maher, A.J. McComiskey, H. Paisley and S. Himel] ss.7(2) of the Original Act provided, as does the version of Public Trustee Act, that the Public Trustee had to be a member of the Bar of Ontario of not less than five years standing. On March 8, 1993, the current Public Trustee, Susan Himel was appointed as acting Public Trustee. The current version of the Public Trustee Act makes provision for the appointment of one or two deputies. There is currently one Deputy Public Trustee, Russell Carrington.

Mandate

The PT has wide ranging statutory duties and responsibilities. In total the PT has responsibilities, mandatory and otherwise under over 30 statutes. These statutes are identified on Chart PT 1. A brief summary of each of the six major program areas follows:

1. Trust Administration

The principal duties and responsibilities of the Office relate to its role as an administrator of estates of incompetent adults. To these responsibilities, it has been suggested that 70 % of the resources are devoted. Pursuant to the Mental Health Act, the Public Trustee is required to assume the management of the estate of a patient in psychiatric facilities and the psychiatric wings of public hospitals or out patients (i) for whom a certificate of incompetence or continuance have been issued or (ii) who have voluntarily appointed the Public Trustee as committee of the estate.

Similarly, under the Developmental Services Act, the Public Trustee is required to assume the management of the estate of residents of facilities which provide services to persons with developmental handicaps (i) for whom a certificate of incompetence has been issued or (ii) who have voluntarily appointed the Public Trustee as committee of the estate.

In addition, pursuant to the Mental Incompetency Act, the Public Trustee has the authority to apply and/or accept a court to be appointed as the committee of a person who is found by a court to be mentally incompetent. Where the Public Trustee has assumed responsibility for the management of the estate of an incompetent person, a number of federal and provincial statutes make provision for the Public Trustee to hold monies such as pensions for the benefit of the incompetent person. These statutes include the Family Benefits Act, the Old Age Security Act, the Canadian Pension Plan Act, the Workers' Compensation Act, the Indian Act, the Compensation for Victims of Crime Act and the War Veterans Act.

Further, the Public Trustee may accept, and on occasion does accept, the appointment as an attorney for the administration of the financial affairs of a vulnerable person.

Once an individual becomes the responsibility of the PT, a number of steps occur. First, generally the file is assigned to a trust officer based on the geographic location of the file, or where applicable the facility in which the client is located, unless the client's only significant assets are government assistance (family benefit) payments in which case the client is assigned to a special group. The trust officer causes an investigation of client's assets to occur. In the short term, family members are to receive funds for immediate use, with longer term provision following an assessment of family needs. Control of the client's assets are assumed. Among other things, notifications of the PT's role is provided to relevant parties with respect to health, pension and other benefits. In all respects, the PT assumes responsibility for the management and control of financial resources of the client. All requests for the use of the client's funds, either by the client himself or by a third party must, in principle, be approved by the trust officer, or in some cases, someone else at the PT.

As an adjunct to its primary role as administrator of estates, the Public Trustee provides legal services for clients in all manner of court proceedings. In addition, pursuant to rules of practice of the Supreme Court, the Unified Family Court and the Provincial Court Family Division, the Public Trustee may be appointed litigation guardian where a person under disability is mentally incompetent or is incapable of managing his or her own affairs, not so declared, and there is no committee of the person's estate.

2. Administration of Crown Estates

The next most significant area of responsibility of the Office is perceived to be with respect to the administration of crown estates. Pursuant to the Crown Administration of Estates Act, when a person dies in Ontario intestate without leaving any known next-of-kin living in Ontario, or when the only next-of-kin are minors and there is no near relative in Ontario willing and competent to apply for a grant of administration or to nominate some other person to apply for the grant, the Public Trustee may apply for letters of administration of the estate of the person.

Upon receipt of a grant of letters of administration, the Public Trustee has all of the powers of an ordinary administrator. In this capacity, the Public Trustee is responsible for the realization of assets, payment of claims, the location of heirs and the distribution of estates. In addition, the PT may institute or defend proceedings on behalf of the estate. The Crown Administration of Estates Act provides that all money in an estate that has been unclaimed for ten years from the death of the individual is to be paid to the CRF.

3. Substitute Decision Making

Pursuant to regulations made under the Public Hospitals Act, the Public Trustee acts as substitute decision maker of last resort for giving informed consent on behalf of mentally incompetent persons requiring non-emergency medical or dental treatment in Ontario public hospitals. Generally, the PT seeks an order from a court under the Mental Incompetency Act for a declaration that the person is mentally incompetent and an order appointing the PT as committee of the person before making a decision with respect to treatment.

4. Charitable Property

The Public Trustee has duties and responsibilities with respect to charitable property subject to the jurisdiction of Ontario courts under the provisions of the Charities Accounting Act, the Charitable Gifts Act and the Religious Organizations' Lands Act. In addition, the Office plays a role in providing assistance to the courts where charitable interests are at issue. The office has a right to be heard in certain limited classes of proceedings, if charities are not represented.

In general terms, pursuant to the Charities Accounting Act, the Public Trustee is required to be notified of any charitable bequest or donation or the creation of any incorporated charity. The Public Trustee has broad authority to obtain information and reports regarding charitable bequests, donations or corporations. The Public Trustee currently

requires the annual filing of audited financial statements, and the Public Trustee has the power to request a court order directing a passing of accounts and a court order to conduct an inquiry into the solicitation or distribution of funds.

Pursuant to the Charitable Gifts Act, the Public Trustee has responsibility for establishing income to be paid to a charity where the charity has a greater than 50% interest in a business.

Pursuant to the Religious Organizations' Lands Act, the Public Trustee is empowered to submit an application to a court for a judicial determination as to the suitability or eligibility of any religious organization to hold land under the Act. In addition, the Public Trustee is entitled to notice of applications pertaining to organizations that have ceased to exist as well as applications with respect to the application of the Act.

The Office plays an active role in reviewing and passing on applications to form charitable corporations pursuant to Part III of the Corporations Act, on behalf of the Ministry of Consumer and Commercial Affairs. The Office has established a series of mandatory provisions which the Office insists must be included in the letters patent of a charitable corporation incorporated under the Corporations Act. Among other things, the Office requires all charitable corporations incorporated pursuant to the Corporations Act to prepare and file with the office audited financial statements each year within six months of the fiscal year end or if financial statements are not prepared, a justifying statement.

Another important role of the Office is with respect to ownerless charitable property of defunct charities, i.e. dissolved incorporated charities, abandoned trusts, or charities whose purposes have become impossible or impracticable to carry out. In these cases the Public Trustee, as bare trustee, applies to court for a cy pres order (to order the property to be applied to purposes as near as possible to the original purposes). In other cases a charity's trustees may realize that the property of the charity can't be applied and they seek a court order for cy pres with the Public Trustee's advice and consent. Finally, in rare cases, where trustees are not applying the property to charitable purposes, the Office may apply to court to obtain trusteeship of the assets of the charity.

5. Forfeiture and Escheat

Pursuant to provisions of the Business Corporations Act, the Corporations Act, the Co-operative Corporations Act and the Loan and Trust Corporations Act, the Public Trustee is responsible for receiving, holding and dealing with the assets of dissolved corporations which are forfeited to the provincial Crown. The Public Trustee investigates, holds and deals with land held by dissolved Ontario corporations, where the land is subject to sale under the Municipal Tax Sales Act. In addition, pursuant to the Escheats Act, the Public

Trustee acts as trustee with respect to property which is escheated to the provincial Crown. Further, the Public Trustee acts as receiver, trustee and processor of unclaimed balances of liquid assets that may be forfeited to the provincial Crown under the Crown Law doctrine of bona vacantia and forfeiture.

6. Cemeteries

Finally, pursuant to the Cemeteries Act, the Public Trustee holds as trustee and invests perpetual care funds (i.e. funds and property received by the owner of a cemetery, mausoleum or columbarium for the purpose of providing perpetual care of a cemetery, etc) received by a cemetery, etc. The Office has duties specified in the Act to account for the use of the funds and has the authority to require owners of cemeteries, etc to account for the use of the funds.

Chart PT 1: Statutes Affecting the Public Trustee for the Province of Ontario

Exhibit 1

STATUTES AFFECTING THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO

ONTARIO

Bulk Sales Act, R.S.O. 1990, c.B. 14
Business Corporations Act, R.S.O. 1990, c.B. 16
City of Toronto Act, S.O. 1981, c. 103, s.5
Cemeteries Act, R.S.O. 1990, c. C. 3
Cemeteries Act (Revised) R.S.O. 1990, c. C.4
Charitable Gift Act, R.S.O. 1990, c.C. 8
Charities Accounting Act, R.S.O. 1990, c.C. 10
Compensation for Victims of Crime Act, R.S.O. 1990, c.C. 24
Co-operative Corporations Act, R.S.O. 1990, c.C. 35
Corporations Act, R.S.O. 1990, c.C. 38
Crown Administration of Estates Act, R.S.O. 1990, c.C. 47
Developmental Services Act, R.S.O. 1990, c. D. 11
Escheats Act, R.S.O. 1990, c. E. 20
Estates Act, R.S.O. 1990, c.E. 21
Estates Administration Act, R.S.O. 1990, c.E. 22
Family Benefits Act, R.S.O. 1990, c.F. 2
Family Law Act, R.S.O. 1990, c.F. 3
Homes for Special Care Act, R.S.O. 1990, c.H. 12
Human Tissue Gift Act, R.S.O. 1990, c. H. 20
Loan and Trust Corporations Act, R.S.O. 1990, c. L. 25
Mental Health Act, R.S.). 1990, c. M. 7
Mental Hospitals Amendment Act, S.O. 1967, s. 49-51
Municipal Tax Sales Act, R.S.O. 1990, c. M. 60
Powers of Attorney Act, R.S.O. 1990, c. P. 20
Public Hospitals Act, O. Reg. 518/88
Public Trustee Act, R.S.O. 1990, c.P. 51
Religious Organizations' Lands Act, R.S.O. 1990, c. R. 23
Rules of Civil Procedure
Succession Law Reform Act, R.S.O. 1990, c. S. 26
Trustee Act, R.S.O. 1990, c. T. 23
Unclaimed Intangible Property Act, R.S.O. 1990, c. U. 1
Workers Compensation Act, R.S.O. 1990, c. W. 11

BY CONSENT, PUBLIC TRUSTEE ACCEPTS TRUSTS PURSUANT TO:

1. Department of Veterans Affairs Act, R.S. 1985, C. V-1
2. Indian Act, R.S. 1985, C. 1-6
3. Absentees Act, R.S.O. 1990, c.A. 3
4. Expropriations Act, R.S.O. 1990, c. E. 26
5. Mental Incompetency Act, R.S.O. 1990, c. M. 9

Mission Statement

It would appear that the mission statement of the Office of Public Trustee was last revised in November 1988. At the time it was revised to read as follows:

The Mission which we have is to courageously and independently perform our mandate in a timely and efficient manner with skill, integrity and discretion, according to the precepts of trust and charities law and the law of informed consent for substitute decision making.

Accountability

As noted above, the Public Trustee Act makes the Public Trustee a corporation sole with perpetual succession, an official seal and authority to sue and be sued in its own name. The Public Trustee enjoys independence from the Ministry of the Attorney General in respect of his statutory duties. However administratively, the Public Trustee reports to the Assistant Deputy Minister, Civil Law Division of the Ministry of the Attorney General and the Office functions like a branch of the Division.

The Office is subject to all guidelines and directives of general application promulgated by the Ministry of the Attorney General and by Management Board of Cabinet. For example, the Office is subject to the annual estimates process as part of the Ministry of the Attorney General and requests for additional staffing must be made in the ordinary course to Treasury Board. Similarly, recent government wide expenditure reduction initiatives have been applied to the Office, resulting recently in the elimination of a 1-800 toll free telephone number and the elimination of the Office's sole articling student.

Provision is made in the Public Trustee Act for the appointment of an advisory committee of the Public Trustee who are to be visitors of the Office of Public Trustee. The Committee is empowered to make policy suggestions and recommendations regarding the management and conduct of the Office. An advisory committee does exist consisting of Richard Monzon, Assistant Deputy Minister, Finance and Administration, Brock Grant, Executive Co-ordinator, Seconded Legal Services and Robert Webster, Director, Borrowing Strategy Secretariat, Ministry of Finance. In recent years, the committee has met at least annually to review the investment portfolio and policies. The committee does not appear to be active at this time. Indeed, apparently it has been suggested by Management Board that there was no reason for the committee and that it should be disbanded.

The Provincial Auditor is required by the Public Trustee Act to examine and report upon the accounts and financial transactions of the Public Trustee, and there is an internal

auditor who reports directly to the Public Trustee.

Finally, the Public Trustee, pursuant to the Public Trustee Act, is required to prepare an annual operational report and submit it to the Attorney General. The Attorney General is required to submit the report to the Lieutenant Governor in Council who is then required to deliver the report to the Provincial Assembly.

Structure and Responsibilities

The approximate 150 current employees of the Office are organized into a number of branches or sections. Information Services, Investigations, Resources/Administration, Finance, Systems, Asset Administration and Trust Services report to the Public Trustee through the Deputy Public Trustee. The Charities, Legal Services and Estates Administration branches report directly to the Public Trustee. The other areas of the PT report through the Deputy Public Trustee as does the internal auditor. A copy of a recent organizational chart of the Office which was contained in the interim report of the operational review of the Office is attached as Chart PT 2.

There is a senior management committee consisting of the Public Trustee, the Deputy Public Trustee, the Director of Legal Services, Senior Counsel, Estates Administration and the Manager of Trust Administration. Recently, this group has been broadened to include the Director of the Operational Review, the Director of Charities and the new Director responsible for the implementation of the substitute decision making legislation. This group services as the principal policy-making body within the Office. In addition, there is an advisory committee consisting of trust administration staff and legal counsel who meet regularly to recommend action on matters to the Public Trustee, relating the administration of individual trusts, primarily matters relating to the disposition of real estate.

A description of the core program areas is set forth above. A description of the common support elements can be described as follows:

- Information Services is responsible for all records and filing with respect to trust and estate clients. In addition, the section is responsible for preparing and filing applications on behalf of trust clients with respect to pension, health and other benefits.
- Investigations is responsible for gathering financial information with respect to the assets of all estates under the control of the Public Trustee.

- Resources/Administration is responsible for the stenography pool, switchboard and human resources in the Office.
- Asset Administration is responsible for the care and control of assets belonging to trust administration clients and crown estates.
- Finance is divided into four operational groups - payments and reconciliation is responsible for making all payments on behalf of clients as well as reconciliation and reporting on all common or central accounts (not client specific) and the preparation of all statements of accounts for clients in connection with cemeteries, trusts, crown estates and the passing of accounts; close-out is responsible for the management of all files of the Office for which responsibility has terminated, including the making of appropriate adjustments and the release of assets; assets is responsible for the receipt of income on behalf of all trust and crown estate clients, including the receipt of dividend and other benefit payments as well as acting as an inventory control mechanism upon the receipt by the Office of tangible assets and cash of clients, prior to the transmission of the assets to the external custodian; and Deputy Director of finance who along with her staff is responsible supervision of the investment portfolio, tax form preparation, budgeting and for preparation of financial statements.
- Systems is responsible for the maintenance and support with respect to information technology systems within the Office, primarily the trust administration management system (TAMS) and the local area network (LAN).

Since 1954, the Office has occupied the top three floors of the Supreme Court building located at 145 Queen Street West. Recently, the Charities branch has taken up residence at 558 Yonge Street, in order that a transition team responsible for planning the implementation of the new Substitute Decisions Act, 1992 could be housed in the 145 Queen Street West offices.

The Office has approximately \$560 million of client assets under administration. During the year ended March 31, 1992, the Office had revenues of \$14.5 million and operating expenses of \$10.8 million. Chart PT 3 is the balance sheet of the PT at March 31, 1992, which was contained in the PT's annual report. On an operating basis, the trust and estate administration program are the major sources of both revenues and expenses. Each program, on an operating basis, would appear to be running an operating surplus. During the year ended March 31, 1993, a preliminary analysis prepared by the team, a copy of which is attached as Chart PT 4, suggests that the Office had an operating surplus of \$5.5 million in trust administration and \$1.3 million in crown estates. By contrast, the cemeteries and corporations functions were essentially break-even activities and the excess of expenditure over revenue with respect to the charities function equalled

approximately \$350,000. The Office has been a significant source of revenue to the C. A. Over the period 1988-1992 the Office contributed a net of approximately \$80 million from escheat and forfeitures and in operating surplus. A significant portion of this sum represented accumulated operating surplus and forfeitures from an earlier period. During this period the PT ran an annual operating surplus of approximately \$45 million.

~~The Office has begun to make use of technology to help address the enormous caseload.~~

Since 1990, a computer based TAMS has been available to trust administration staff. More recently a LAN has been installed throughout the Office. The TAMS processes over 750,000 transactions per month. A file management system has been located on the 134 workstation LAN. The office is also actively exploring opportunities to introduce document imaging and electronic data interchange into its every-day activities.

Current Organization Chart

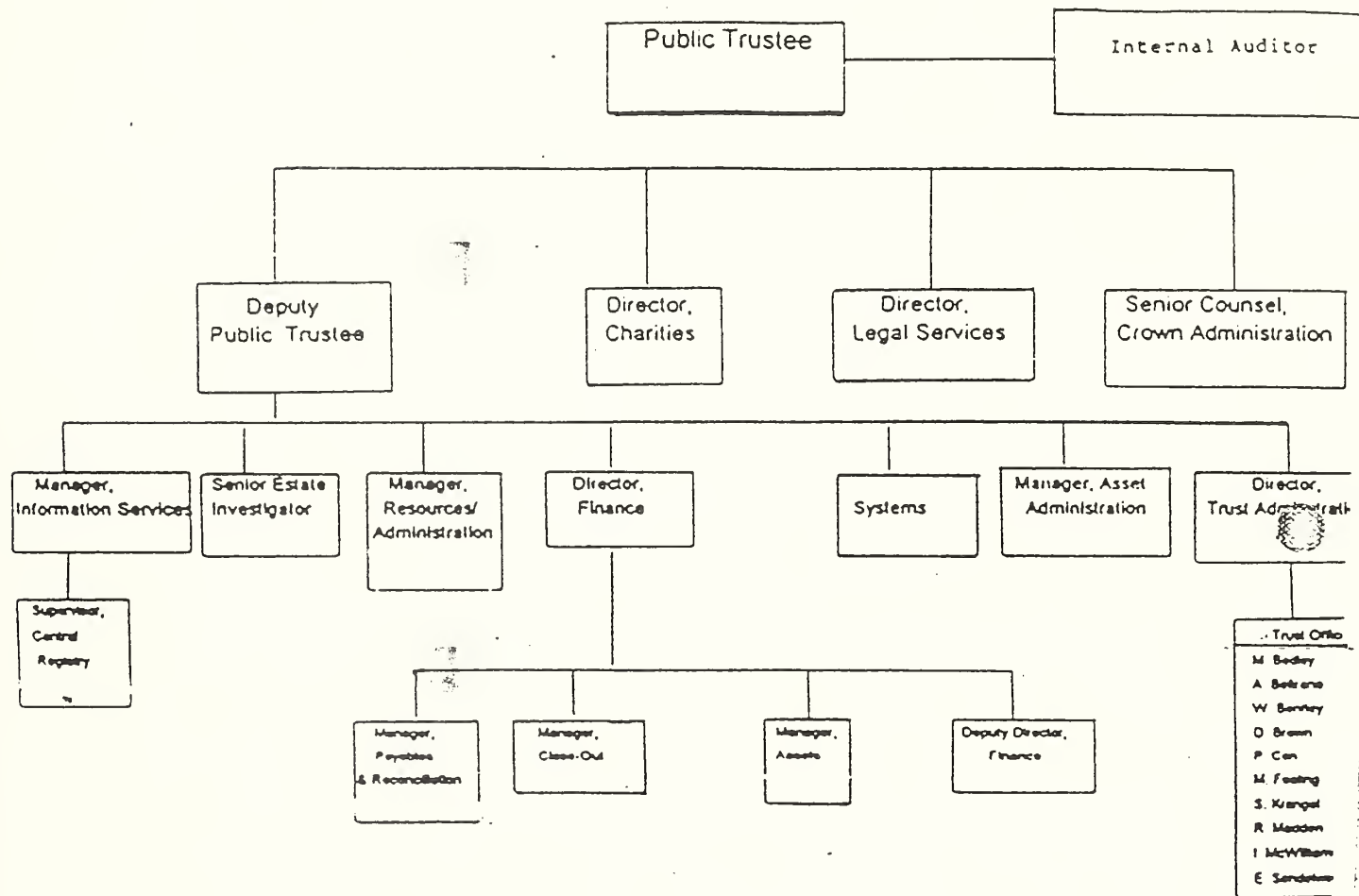


Chart PT 3: Statistical Review

Exhibit 3

THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO

STATISTICAL REVIEW

AS AT MARCH 31, 1992

	<u>1992</u>	<u>1991</u>
	<u>(\$000's)</u>	<u>(\$000's)</u>
Assets under Administration	562,939	524,951
Revenue	14,462	14,163
Operating Expenses	10,815	11,236
Excess of Revenue over Expenditure	3,647	2,927
Surplus	7,061	4,140
Cash Receipts	245,737	311,262
Funds Invested by the Public Trustee at Book Value	324,045	256,577

	<u>1992</u>	<u>1991</u>
No. of Files - Estates and Trusts	24,203	24,162
No. of Files - Charities	61,985	59,351
No. of Staff - Permanent	152	154
- Contract	5	12

Chart PT 4: Revenue and Expenditures to March 31/93

Public Trustee
Revenue & Expenditures
\$000's (preliminary figures)
To March 31/93

REVENUE			Total	Clients	Crown	Corp.	Charities	Cemeteries
Fees			9,001.2	7,089.5	1,490.2	89.8	276.8	55.3
Bank Interest(1)			40.8	38.0	4.2	0.4		
Income from funds Invested(net)(1)			8,898.5	6,660.8	1,297.8	48.1		
			18,938.3	12,676.3	2,792.0	138.1	276.8	55.3
#	Cost Centre		Total Expense	Clients	Crown	Corp.	Charities	Cemeteries
280	PT's Off.(4)	Sal/Ben	480.9	299.8	50.1	3.0	101.8	8.8
		OOOE	79.4	81.8	8.8	0.8	17.5	1.1
281	Steno P. (3)	Sal/Ben	457.4	360.4	78.8	4.8	13.7	2.7
		OOOE	127.8	100.5	21.2	1.3	3.8	0.8
282	Cent. R. (3)	Sal/Ben	533.4	420.3	88.5	5.3	18.0	3.2
		OOOE	19.2	13.1	3.2	0.2	0.8	0.1
283	Person'l (3)	Sal/Ben	200.9	168.3	33.3	2.0	8.0	1.2
		OOOE	68.0	52.0	11.0	0.7	2.0	0.4
284	Gen. Exp.(3)	Sal/Ben						
		OOOE	499.9	393.9	83.0	3.0	13.5	3.0
285	Asset Ad.(2)	Sal/Ben	521.1	442.7	74.0	4.4		
		OOOE	30.4	25.8	4.3	0.3		
286	Legal(3)	Sal/Ben	981.2	781.1	184.5	8.8	29.7	5.8
	(direct)		913.5	809.0	192.9	101.5		10.2
		OOOE	100.1	73.1	18.8	5.9	1.8	0.8
287	Tr. Admin(2)	Sal/Ben	1,963.4	1,682.3	281.1			
		OOOE	41.6	36.8	6.9			
288	Charities	Sal/Ben	350.8				350.8	
		OOOE	40.1				40.1	
289	Investg(2)	Sal/Ben	326.8	277.5	48.4	2.7		
		OOOE	88.9	75.5	12.8	0.7		
293	Fin/Acc (3)	Sal/Ben	1,844.5	1,296.9	273.0	16.4	48.3	9.8
		OOOE	84.7	74.8	16.7	0.9	2.8	0.6
294	Data Cont(3)	Sal/Ben	480.3	398.8	83.6	4.9		2.9
		OOOE	142.8	118.1	24.4	1.4		0.9
295	Mail Room(3)	Sal/Ben	108.2	83.7	17.8	1.1	3.2	0.8
		OOOE	82.2	49.0	10.3	0.8	1.9	0.4
TOTAL March 31			10,353.0	7,872.6	1,800.4	173.4	856.0	51.2
Excess Revenue over Expenditure			5,585.3	4,803.8	1,181.8	(35.3)	(379.4)	4.1

(1) Allocated based on interest paid on accounts
(2) Allocated based on assets
(3) Allocated based on fees
(4) Charities Direct - remainder based on assets
All OOOE allocated based on salary allocation

Client-Focused Description

Given the diversity of the program for which the Office is responsible, it is not surprising that the clients of the Office are equally diverse. There was very little hard statistical information available on the PT. Most of what is presented is based on conversations with internal informants, a 1989 client profile document prepared by the Deputy Public Trustee and secondary sources which have independently consulted with the PT.

There are currently approximately 17,000 adults for whom trust administration services are being provided by the Office, with approximately 2,000 new clients each year. Approximately 75% of these clients reside in either public or private facilities, largely in homes for special care, facilities for the developmentally handicapped, psychiatric hospitals and general hospitals. The remaining 25%, and a growing percentage of the trust administration client group, reside in the community. At one time 90% of the clients of the Office were hospitalized. Now approximately 85% of the clients of the Office live somewhere other than in hospital.

Approximately 50% of the trust administration clients are over 60 years of age. Two-thirds of this number are between the ages of 60 and 80. The other third are over 80 years of age. The largest growth in clients over 60 years of age are women over the age of 80.

Of the approximately 17,000 trust administration clients, approximately 15,500 became clients as a result of the issuance of certificates of incompetence. Approximately 500 individuals have become clients as a result of court order. Another 700 have become clients as a result of voluntary appointment of the Public Trustee. The remaining 150 or so have appointed the Public Trustee under an enduring power of attorney. The average size of a client trust account is \$35-40,000. The average size of account has increased significantly over the past 20 years, creating greater complexity in the work of the PT.

Geographically, the distribution of trust administration clients reflects the sole office location of the Office in Toronto. More than 50% are resident in the following four court districts - Toronto, Newmarket, Brampton and Hamilton. There are approximately 20 % in each of Ottawa and London. The remaining less than 10% or so is split equally between Sudbury and Thunder Bay.

Trust administration clients are served directly by a group of approximately 40 individuals overseen by the manager of trust administration - divided equally among trust officers, assistant trust officers and trust clerks. There are approximately 11 teams of a trust officer, an assistant trust officer and a trust clerk. With the exception of one team

responsible for family benefits assistance recipients, only each of the other teams has responsibility for approximately 1,400 clients, having cumulative assets of approximately \$55 million. Clients of each team are allocated on a geographic basis. The trust administration group is supported by investigators, and the assets administration and trust accounting sections. In addition, a group of five lawyers are assigned to the trust administration group.

In the area of estates administration, the office has approximately 4,000 files under active administration. There are approximately 200 new files per year. The Review Team was informed that the number of active files has remained relatively constant in recent years. There were no other statistics available on this program area. The estate administration group is led by a senior counsel and includes three estate officers and other three lawyers. The group is supported by investigators, and the asset administration and trust accounting sections.

Much like private trustees, the PT charges trust and crown estate clients for services rendered. The services of lawyers (\$100-200 per hour) and investigators (\$45 per hour) are charged out to clients. Clients are also charged for services which have been contracted out including, realty and tax form preparation expense. In addition, trust and estate clients are charged the traditional trustee fees as follows:

- 2 1/2% on capital coming in
- 2 1/2% on capital going out
- 2 1/2% on interest coming in
- 2 1/2% on interest going out
- 2/5 of 1% annually on the value of all assets as an administration fee.

Trust and crown estate clients earn interest on their investments which are administered by the PT. Trust and crown estate investments earn interest at rates of 7% and 3% respectively. In the area of charities, the office has responsibilities with respect to funds of over 35,000 Ontario charities. The charities can be divided in a couple of different ways. First over half of the charities in Ontario are quite small, with revenue of less than \$50,000. Second, based on a recent Revenue Canada report, of the approximately 23,000 shown as Ontario charities, almost 45% are of a religious nature. Three categories have roughly 15% each - education, welfare and general benefit to the community. Third, roughly 90% of all registered charities are charitable organization formed for charitable purposes. The remaining 10 % is equally divided between private and public foundations.

There are also approximately 80,000 wills containing charitable bequests. Further, annually the Office provides to charities/executors of estates approximately 12-15,000 notifications of charitable bequest in wills. In addition, the Office reviews, on behalf of

the Ministry of Consumer and Commercial Relations annually approximately 800 applications for incorporation of charities pursuant to Part III of the Corporations Act. The branch has a staff of eight. There are three lawyers, two of whom do primarily litigation and the third who serves as the director.

It is also possible to provide some perspective on other aspects of the office from the perspective of clients. There are, for example, approximately 500-600 litigation guardian files, with 100 new files each year. There are two counsel responsible for both litigation guardian files, as well as litigation of trust and estate clients. In the consent to treatment area, there are approximately 400 files of which 75 are active at any one time. A significant amount of litigation arising outside of Toronto is handled by agents, who are supervised by litigation counsel in the Office. In particular the Hamilton law firm of Ross & McBride plays a co-ordinating role with respect to much of this litigation. There is one counsel assigned to handle the consent to treatment mandate of the Office. In the area of escheat and forfeiture, there are 4,400 files divided into 3,900 open forfeiture and escheats files and 500 files relating to unidentified shareholders of corporations which have been voluntarily dissolved. The mandate is overseen by one lawyer, supported by trust accounting. Finally there are approximately 550 active files in the cemeteries area where the Office is administering trust funds. For the most part, the head of the Estates Administration section manages this mandate, with the assistance of trust accounting.

IV. CRITERIA FOR ASSESSING PROGRAM AND OPTIONS

A vision of client-focused service has been generated in this report which involves seven related sets of criteria for assessing programs. Together, these criteria provide a framework for making the business decisions necessary for providing better client service. They also offer a sense of direction for the future work of program directors throughout the Ministry, including a reexamination of the culture of programs and of the Ministry as a whole in supporting client service with cost-effective activities and responsive management. This framework is also intended to inform decisions related to broader structural reform options in the Ministry, related to these programs and others. Thus opportunities for amalgamating, restructuring, delayering, privatizing, and regionalizing programs within the Ministry can be assessed against these criteria.

These criteria reflect the client service literature and other readings, as well as our discussions with clients, program staff, and ministry and government officials. They are: client-focused service criteria, including both traditional client indicators and those address the development of a client-focused organization; client well-being; client rights; community accountability and participation; operation on a continuum of supports; cost-effectiveness and administrative simplicity; and broader corporate priorities. Each of them is discussed in more detail below.

A. CRITERIA RELATED TO A CLIENT-FOCUSED SERVICE PERSPECTIVE

"Total Quality Management", the 1980s coda for radical reform in the private sector, has had equally important impacts on the public sector since 1990. Originally imported along with Toyotas and Sony transistors from Japan, the quality revolution affects every element of an organization. While the priority in service quality involves listening to clients in order to determine objectives and outcomes, the pathways include empowerment for front-line staff, placing accountability closer to clients, streamlining processes while checking for quality throughout, and reducing layers through increasing the span of management control.

These changes require committed leadership and perseverance. As the "gurus" of private sector quality, Tom Peters and Peter Senke point out, the barriers and resistance to organizational change are multi-faceted. For this reason, every employee must be involved in defining new roles and responsibilities that are focused on quality, and in assessing and contributing to the kinds of changes needed. The culture of a quality organization is one of constant improvement and innovation. Not only must every member of an organization learn new habits and attitudes, but the organization itself must

be capable of "learning" - responding to its environment, staff, clients - as opportunities for continuous and systemic creativity.

Translating this quality revolution into public service reform also means defining roles and responsibilities from the "outside to the inside". In the federal effort, PS 2000, the task forces on quality service and learning became the leaders and transformers of a managerial revolution in which every department is expected to develop a mission statement to inform its service objectives. In this perspective, Canadians are seen as clients. To achieve this, the vision has been one of a continuous learning culture with "much greater involvement of employees in assessing organizational problems through mechanism such as employee surveys, councils for change and upward feedback (PS 200, A Report on Progress, p. 82)."

In Ontario's quality service report, Best Value for Tax Dollars: Improving Service Quality in the Ontario Government, the effort is directed to clarifying service gaps and new objectives for programs through increased customer research, identifying and removing service barriers, aligning policies and management systems, and taking advantage of opportunities for better service. Client task groups have been set up throughout the government with the goal of reforming practices and principles surrounding service. This has meant both Ministry-wide and program-specific efforts.

A range of indicators for service quality result from these efforts. While broadly generalizable to a range of programs, specific applications need to be drawn out for individual programs. This can be accomplished either through a client-focused review of the kind undertaken with this report, or through the efforts of program staff as they redesign their work based on customer research.

While traditional indicators serve a crucial role in defining needed client services improvements and the organizational changes necessary to create them, they lack the capacity to inform questions about the central service requirements of these programs. For example, improved service delivery at regional offices by counter staff may be achieved by training for greater flexibility and closer attention to detail. This will not, however, inform questions about whether or not counter services are fundamentally the best way to achieve the information elements of the program. Alternatives for information and service via telephone may prove to be the more responsive and cost-effective option if other criteria are taken into consideration.

For this reason, despite their critical importance, traditional client satisfaction criteria should not be used in isolation. They need to be complemented with an analysis of other relevant criteria in assessing the broader options for program renewal. Related decisions about the most appropriate service requirements for clients, the position programs can potentially play on the continuum of supports, the best way to provide referrals for client

well-being, the avenues to fostering clients' rights, or the cost-effectiveness and administrative simplicity, all require explicit consideration in assessing program change.

A1. Traditional Client Satisfaction Indicators

Client and consumer expectations are rarely formalized. For this reason, good service may often go unacknowledged, while clients react to poor service. Nevertheless, clients and consumers do have unarticulated expectations which, if made explicit, can help an organization to respond effectively. These expectations can be set out as criteria by which the client or consumer judges the kind and quality of service being provided. For the purposes of this review, the client satisfaction literature and discussions with clients themselves indicate the following measures as being crucial:

NEEDS MET: To what extent does the service meet clients' needs within the accepted mandate of the program?

- degree of change in clients' situation after service
- speed and quality of results achieved because of service
- usefulness and helpfulness of service
- level of satisfaction with the kind of services provided
- are the programs offering a level of service which may evoke charge of regulatory negligence?

ACCESSIBILITY: How accessible is the service to all clients?

- appropriateness of location
- appropriateness of hours of operation
- convenience and design of service location
- amount, kind, and targets of publicity
- ease of getting information about the program
- ease of obtaining appointments or receiving service
- number of contacts, locations or people required to complete the transaction
- choice of service delivery methods such as telephone, mail, in person, or by computer
- service offered in language of choice
- clear, simple, and familiar language
- simplicity and clarity of information, forms, and documents
- simplicity of procedures

CLIENT ACCOUNTABILITY: To what extent is the service accountable to clients?

- suggestions for improving service regularly sought from clients
- client suggestions acted upon
- simple, open channels for clients to register compliments or complaints without feeling that their service will be jeopardized
- information given to clients about service standards and costs

RESPONSIVENESS AND FLEXIBILITY: To what extent is the program responsive and flexible to client demands and needs?

- authority and accountability placed in staff as close to service delivery levels possible
- empower staff to exercise that delegated authority effectively
- on the spot decisions wherever possible
- willingness or readiness of staff to provide service
- extent to which service is adapted for clients individual needs and circumstances especially those clients with "special needs"
- staff's understanding of clients' needs

RELIABILITY: To what extent is the service reliable?

- accuracy of service
- knowledge, skilfulness and competence of staff
- consistency of service from one employee to another
- confidentiality
- getting direct answers

RESPECTFULNESS: To what extent does the staff serve clients with respect?

- respect for privacy
- respect of culture, ethnic origin, religious and other beliefs, disability, etc.
- humaneness and empathy
- courtesy and helpfulness

TIMELINESS: To what extent is the service timely?

- amount of waiting time to receive initial service
- amount of waiting time to receive further service
- service received at the appropriate time of need

COST: To what extent do clients get value for money?

- cost of service transaction by type of transaction
- value for money, tax dollar

A2. Criteria for a Client-Focused Organization

Good client-focused service comes not just from the welcoming and effective interaction with the consumer. It also depends on the orientation of the whole organization. Every member must see himself or herself as an important link to good client service.

COMMITMENT TO PUBLIC SERVICE: To what extent does the program staff and management have a commitment to offering responsible public service?

- does each member of staff and management understand the link between their work and service to the public?
- meeting their commitment

ATTENTION TO STAFF SUPPORT: To what extent does the organization support staff's commitment to good client service?

- constructive feedback on performance
- recognizing efforts in delivering service quality
- appropriate and continual training
- appropriate caseload
- adequate equipment
- good working conditions
- well designed policies and processes
- recruitment and selection
- information exchange

AMONG STAFF: To what extent does the organization foster a supportive atmosphere among staff?

- mutual respect
- seeing fellow employees as part of service capability
- consensus building
- supportive, not competitive, culture
- building morale
- listening to staff complaints and suggestions

- frequent consultation, information sharing and problem solving with the unions

B. CRITERIA TO ESTABLISH WELL-BEING

The emerging discussion of well-being in the policy context has broadened the debate surrounding appropriate public policy objectives. Canada, as a signatory to the International Covenant on Economic, Social and Cultural Rights, part of the United Nation's International Bill of Human Rights, has expressed a commitment to a broad set of social and economic rights. This covenant guarantees the right to work; to be free from hunger; to an adequate standard of living (including food, clothing, and housing); to the highest attainable standard of physical and mental health; to education; to participation in cultural life; etc. However, these "social" rights have not been formally incorporated into Canadian law. Thus, while some individuals and groups remain disadvantaged with respect to these rights, they do not have the basis of a claim under Canadian law for the resources or conditions necessary to exercise these rights.

Nevertheless, these broader expectations increasingly shape the way in which Canadians relate to government. A level of commitment has been made and some basis has been established for the protection and exercise of these rights. One definition, forthcoming as a framework from the Ontario Premier's Council on Health, Well-Being, and Social Justice, explains well-being as, "the pursuit and fulfilment of personal aspirations and the development and exercise of human capabilities, within a context of mutual recognition, equality, and interdependence (Drover and Kerans, 1993)." In these terms, the concept of well-being is highly inclusive. The determinants of well-being include not only traditional health and economic indicators, but also environmental, social, and other opportunities offered to individuals.

Well-being is not only a broad concept, it is multi-levelled. Individual, community, and societal objectives all must converge to produce "well-being". In establishing the welfare state in Canada, governments have made commitments to help people secure a satisfactory quality of life. Well-being for the individual may then be elusive unless community opportunities are realized, or societal goals achieved. Thus even a high level of well-being for a few privileged members of the social group would do little to ensure the broader capability of a society to provide for its members.

Defined in these terms, well-being can also be considered as founded in autonomy, a sense of personal control, and democratic process. As individuals demand to have a say in the kinds and levels of service they may receive, self-determination means that people should be able to define their own needs, in relation to their particular interests, values, and goals. Asserting the need to foster well-being has radical implications for the delivery of client services. It means taking into account the bigger picture.

The following criteria outline some of the considerations for well-being of which service delivery programs should be aware.

EMPOWERMENT: To what extent does the service empower clients?

- efforts of personnel to keep clients informed
- attitude that service is working in partnership with client
- involve clients in setting/changing service standards

REFERRAL: To what extent does the service make referrals to support the clients' general well-being?

- referrals made upon first contact
- referrals made for follow up
- appropriate
- consistent
- to services outside the mandate of the program
- to services complementary to the program.

C. CRITERIA WHICH ENSURE RIGHTS

The emerging awareness of rights is a reflection of developments in both international and domestic law. An important source of modern human rights law can be found in the words of the Charter of the United Nations. In Article 55, the United Nations and its member states agreed to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Shortly thereafter, in 1948, the United Nations General Assembly adopted the Universal Declaration on Human Rights. The Universal Declaration remains today one of the most influential international texts in the law of human rights. With precision, the Universal Declaration states the basic human rights which all of mankind should be entitled to enjoy. Article 1 provides that all human beings are born free and equal in dignity and rights. Article 2 provides that everyone is entitled to all the rights and freedoms set forth the declaration, without discrimination of any kind. Article 3 provides that everyone has the right to life, liberty and the security of person. Article 7 provides that all are equal before the law and are entitled without discrimination to equal protection of the law. More recently, in 1975, the United Nations General Assembly adopted the Declaration of the Rights of the Disabled. For example, Article 1 of the Declaration provides that the disabled person has, to the maximum degree of flexibility, the same rights as other human beings. Article 3 provides that disabled persons have the inherent right to respect for their human dignity. Article 5 provides that disabled persons should be entitled to

take measures to become as self-reliant as possible. Finally, most recently, in 1989 the United Nations General Assembly adopted the Convention on the Rights of the Child. The Convention defines with great clarity the principles which mankind accept as the basic human rights of children. There are forty substantive provisions to the Convention. Among the duties of the State recognized are the obligations to protect children from all forms of abuse, neglect and exploitation, sexual exploitation and abuse and torture or other cruel, inhuman or degrading treatment. Among the rights recognized include the rights to education, protection from economic exploitation, express an opinion in matters affecting the child and protection from any form of discrimination or punishment based on the family's status, activities or beliefs.

In Canada, the earliest human rights code was enacted in Ontario in 1962. The Code, in its current form, prohibits discrimination in services, accommodation, contracts and employment, subject to a series of exceptions. In 1980, Canada moved fundamentally away from its unwritten common law approach to civil liberties and established a federal Charter of Rights and Freedoms. The Charter articulates the basic commitment to a "free and democratic society" and lays out some of the more specific rights which flow from this general commitment. These are "fundamental freedoms" including freedom of conscience and religion, association, expression, etc.; equality rights; democratic rights; mobility rights; legal rights, including life, liberty, and security of the person; official language rights; and minority language and educational rights.

It is important to note, however, that the guarantees enshrined in the Charter are not absolute. These guarantees are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The courts have held that the government bears the onus of establishing that the infringement of a right otherwise guaranteed by the Charter is justified. The Charter also provides that an individual whose rights or freedoms under the Charter have been infringed or denied, may apply to a court "to obtain such remedy as the court considers appropriate and just in the circumstances."

In the past few years, Canada has been moving towards a rights sensitive society. People are increasingly aware of their rights, and are increasingly insisting on their rights. Actions are now being measured against their effects on individual rights. Although there may be no difference in rights, the conditions necessary to exercise these rights may vary with different clients. As a result, ensuring rights may require special supports for some people. This is especially relevant for many of the clients served by the programs under review.

The way of exercising rights has raised itself in different ways in every program in this review. That there was a possible spectrum of program models which addressed the rights of clients/consumers was evident in discussion. At one end of the spectrum might lie the traditional model of the government's paternalistic role of protecting the legal rights for individuals from others. At the other end might lie a model which encompasses

the evolving images of rights where individuals are empowered to protect their own rights from others, including the government.

The following criteria, taken from the evolving discourse about rights, have been used to assess programs for this review and may be used to examine others.

FOSTERING: To what extent does the service foster rights?

- treating clients as "full" persons
- explaining rights
- making certain that people understand their rights
- ensuring that conditions exist for people to exercise their rights

EQUITY: To what extent is the service equitable?

- provided in a fair, non-partisan, non-discriminatory manner
- encourages all eligible clients to use service
- ensures equity of access
- ensures equity of outcome

EVOLVING: To what extent is the service able to respond to the evolving context of individual rights?

- keeping current with case law regarding rights of individuals
- quickly incorporating current understandings of rights into operating procedures
- offering staff training regarding new understandings of rights

PROTECTION: To what extent does the service protect the rights of individuals from the family and the government?

- safeguards present to ensure that clients' rights are not abused by their families
- safeguards present to ensure that clients' rights are not abused by the state
- what is the understanding of the protection role that it plays?

D. CRITERIA WHICH FOCUS ON THE COMMUNITY

Indications on every front suggest that governments at all levels are attempting to shift the responsibility, accountability, and cost of services to more local levels. Doubts about

the capacity of government at central levels to undertake and pay for the levels of client service and support which were taken for granted (if not actually delivered) even ten years ago are now commonplace. At their most vocal level, these reflect the current consensus, across the political spectrum, about the critical need to reduce the deficit.

In fact, however, the concern to locate accountability at more local levels stems from other origins as well, including the opportunity to control and responsibility at more local levels of governance. This promises the empowerment of a broader range of stakeholders, and therefore the assurance that programs will be responsive and representative to community needs. Thus, from a community perspective, the most relevant criteria is that policy decision-making be controlled and accountable to the citizenry. The empowerment of citizens and "prise en charge", as they say in Quebec, are the means through which the disenfranchised and the disillusioned can regain control of the services which they require from the governments they fund. These in turn rest on the assumptions that increased voluntarism, and the strengthened capacity of community groups, will accompany the decentralization of the health and social services systems, in order to take up the role and costs previously born by the central state.

Some see this restructuring as perhaps a new "...epoch in which major economic transformations are to bring about, through new class alliances and conflict, decentralization of power and a better quality of life in communities." Linking these two agendas, is the objective of those initiatives which claim to be both "cost effectively integrated" and "community-based". This approach has been hailed by some as the way to achieve empowerment and community control, or as Tsalikis describes them, "... holistic services adjusted to local needs." Whether or not these two objectives can actually be reconciled in practice remains unanswered.

Genuine effort to involve the community interested in the client population and its issues can also lead to better client service. Traditional services, often delivered by "experts", professionals, and centralized bureaucracies, have been questioned in efforts to achieve well-being. Individuals and communities which seek greater citizen participation and accountability, or demand to define their own responses to community needs, are challenging these traditional hierarchies.

COMMUNITY ACCOUNTABILITY: To what extent is the appropriate accountability located at the level of the community?

- community board/ independent point of responsibility

CITIZEN PARTICIPATION: To what extent does the program assure authentic citizen participation?

- advisory committee
- support for self-help client groups
- regular community consultations which are taken seriously

STAKEHOLDER INTERESTS: To what extent does the program take into account the interests of different stakeholders and how those interests effect expectations from the program and reactions to the program?

- Professionals
- Agencies
- Advocates
- Families
- Private Sector.

E. CRITERIA WHICH POSITION PROGRAMS IN A CONTINUUM OF SUPPORTS

No program operates in isolation; each operates within a universe of other supports available to individuals. Supports may be provided by family and friends. They may be available from the voluntary sector, self-help organizations, private practitioners, and others. In addition, these different supports may be similar, redundant, complementary, or at cross purposes with one another. Some examples are supports which may be available from:

- family
- friends
- self-help groups
- private practitioners
- community agencies
- municipal government
- the same division
- the same ministry
- a different ministry
- the federal government.

In order to offer most benefit to consumers, programs need to actively and carefully position themselves on the continuum of supports available to their clients. This means identifying the distinctive service requirements that the program is intended to achieve.

For example, some programs may work in a relatively empty field, either offering a service for which all clients have no alternative source or to which clients turn as the first

resort because it is mandatory. Others may occupy an empty field by virtue of the fact that they are the sole or "last resort" to which clients can turn. On the other hand, some programs may work in a very full field of complementary supports provided by a wide range of other stakeholders. In order to position the program on the support continuum, and to understand clearly its role, it is necessary to focus in on the distinctive elements of the program in relation to others.

DISTINCTIVENESS: To what extent is the service provided by this program distinctive?

- degree of overlap with related programs/services
- extent of conflict with other supports
- elements of this service not offered by others
- is it a program of last resort
- is it a program of first resort.

After identifying the central business of the program - that is, focusing on its distinctive and essential mandate, questions need to be raised about the activities which can best achieve these desired outcomes.

DELIVERY OF CLIENT SERVICES: To what extent do the activities of the program achieve its central service requirements?

- degree to which the program needs to offer direct client contact?
- what information needs does the program fill.

Finally, structural issues need to be raised about how the program can best operate, and how it can best relate to other supports and services. For instance, it may be more or less appropriate for a program to play a variety of roles in relation to other programs on the continuum. These roles include leadership or partnership, training, coordination and linkages, and public education and referral. A program may appropriately play one, many, or none of these roles. In most cases they are not mutually exclusive, but there also may be others on the continuum of supports better positioned to play these roles.

LEADERSHIP: To what extent is the program capable of playing a leadership role?

- the first to provide innovative service
- defining the relationship among supporters.

PARTNERSHIP: To what extent should the program be in partnership with other programs delivering the same service?

- work side by side.

COORDINATION: To what extent should the program take a coordinating role?

LINKAGES: To what extent should the program form linkages with other programs?

PUBLIC EDUCATION: To what extent should the program take on a public education role?

- inform the public of programs available
- inform the public of their rights
- change society's attitudes towards issue.

TRAINING: To what extent should the program provide training to others in the continuum?

- train other organizations in service delivery techniques.

DEVELOPMENT: To what extent should the program develop new procedures, innovations, etc.?

- develop new methods, procedures, concepts.

F. CRITERIA FOR COST-CONSTRAINT AND ADMINISTRATIVE SIMPLICITY

The Shared Accountability Framework for government and the current cost expenditure reduction exercise have both placed pressures on ministries to provide highly efficient and effective services. Business decisions about what services and levels of services must be delivered, and at what cost, are part of these imperatives. Increasingly every program must justify itself and the service it provides as government seeks to do "more with less".

No simple formula are available to shape these cuts, however. They have been left at a broad level of justification. However, cuts in whole programs have occurred in some cases. This is unlikely to be the case in most of these programs, but it is necessary to ask if the real mandate is being served or could be better served through other mechanisms.

By the same token, changing programs is hard work. Relevant criteria need to be established to help ensure that innovations in programs provide added value - that they

are worth the resources and effort required to implement them, both in terms of direct costs, but also in terms of cost-effectiveness. The following criteria have been used to assess the recommended options for program change. They are intended to inform decisions about trade-offs in light of short term strengths and weaknesses, as well as in terms of longer strategic investments.

COST EXPENDITURE REDUCTION: To what extent are the resources dedicated to this program consistent with ministry staff ratios and budget guidelines?

- are staff resources tailored to non-duplicative roles
- do budget items conform
- are the contracting costs comparable
- are the fees paid to professionals fair or excessive
- are the fees comparable to those paid by other programs.

COST-EFFECTIVE CRITERIA: To what extent are resources effectively channelled to outcomes? How does this program compare with others that deliver client services?

- client load
- per client load
- paper burden
- total program costs
- cost of program changes
- opportunities for technological innovation.

DIFFICULTIES IN TRANSITIONS: To what extent does the program option create unanticipated consequences in the following areas?

- disruption of client service
- staff disruption
- lowering of staff morale
- lost/gain in economy of scale
- ambiguity about accountability during transition
- lack of ownership
- failures in leadership and commitment.

G. BROADER CORPORATE CRITERIA

Program options need to be assessed not only light of their capacity to improve upon existing activities and operations, but also in terms of the broader corporate agenda.

These elements, set out as criteria below, form the foundation on which the architecture of programs must be built.

First, commitment and leadership to these broader corporate objectives on the part of senior managers will be necessary to implementing the vision and framework of client-focused service developed in this report. Without this "top-down" ownership of the change process, individual program innovations undertaken in isolation are likely to end in frustration and failure. Given the real and persistent structural barriers to change in any organization, this commitment needs to be brought from the level of discussion to the level of action. The criteria below suggest how the corporate priorities can be put into practice through the operations and systems of the Ministry, offering programs the essential support required in undertaking the arduous and risky business of reform.

Second, the capability of program reforms to complement and contribute to broader corporate criteria are considered. These include the extent to which existing programs and options mesh with the existing priorities of the ministry, other Ministries, and the government as a whole, including related programs, cohesive organizational operations, regional simplicity, and the creation of a management culture capable of constant improvement.

COMMITMENT TO RESPONDING TO CLIENTS: To what extent do existing programs or options have the support and commitment of all levels of the organization, including senior management, to implementing options which respond with high quality services to community and clients?

- outreach and public education on the importance of these programs
- consistent and authentic client consultation
- customer research as a priority
- representation at the senior management committee
- incentives and performance appraisals
- basis of promotion.

RECOGNITION/FIT WITH GOVERNMENT-WIDE PRIORITIES: To what extent do existing programs or option demonstrate a commitment to other priorities of government?

- awareness and coordination with chosen "signature pieces" of government
- sensitivity to the shared accountability framework
- consistent with the broader integration and coordination of services across ministries (particularly to these same clients, eg. Advocacy Project, Long Term Care Initiative, Social Assistance Reform, Children's Services, and others).

LINKING AND BUILDING A COHESIVE MINISTRY OF THE ATTORNEY GENERAL: To what extent do existing programs or options contribute to the Ministry's effort to create a unified corporate culture and mode of operation?

- awareness and coordination with other Ministry priorities
- sensitivity to shared vision and mutual respect
- consistent with broader coordination and integration within the Ministry
- capacity to place corporate good over territorial interests.

STREAMLINING REGIONAL OPERATIONS: To what extent do existing programs or options contribute to the Ministry's effort to reduce inconsistency and redundancies in regional structures?

- elimination of repetitive or overlapping regional presence
- clear justification of the service requirements of regional structures
- ensuring that regional operations flow through single point of local administrative accountability.

CREATING A CONTINUOUS LEARNING CULTURE: To what extent do existing programs or options contribute to the Ministry's effort to develop a progressive and innovative management culture?

- informing innovation through front-line involvement
- reducing management layers
- empowering staff at all levels with real responsibility
- placing decisions closer to clients
- 360 degree performance appraisals
- flexible, transparent, and accessible decision-making.

V. FINDINGS AND RECOMMENDATIONS FOR INDIVIDUAL PROGRAMS

Using the criteria developed in Section IV, the strengths and weaknesses of each of the program are assessed below. After each discussion, recommendations for program reform are developed.

A. FAMILY SUPPORT PLAN

FINDINGS

A. Client-Focused Service Criteria

A1. Traditional Client Satisfaction Indicators

NEEDS MET

The primary function of the FSP program is to enforce and monitor support obligations as required by a support order or contract. For the purposes of this review, one important question then revolves around how well the program is doing in the respect of ensuring that the support obligations are met.

Chart FSP 2: Collection Percentages

	With SDO %	Assigned Cases %	Total Caseload %
Full remittance	30	8	22
Some remittance	39	17	24
No remittance	31	75	54

Arrears registered at year end 1992-93 were in the amount of \$630 million. About 60% of these are owing to recipients and 40% are owing to the Treasurer of Ontario.

Standard Deduction Orders

The figures in Chart FSP 2 suggest that Bill 17, which authorizes the standard deduction order, is an effective tool in getting and keeping the money flowing on a regular basis.

Some, if not full remittance, is achieved on 69% of cases where there is a standard deduction order. This represents 18% of the total caseload (27% of the total caseload are on standard deduction orders).

Recipients speak highly of the standard deduction order and view this tool as a positive contribution to the rights of children (to fulfilment of basic needs and an adequate standard of living). Recipients state that there are additional positive aspects of the standard deduction order:

- recipients do not have to deal directly with the payor, which avoids conflict and reduces stress within the family
- recipients do not have to negotiate regularly as to the amount of money to be received.

However, recipients feel that the standard deduction order legislation has not gone far enough:

- increased measures should be taken to trace payors and their places of employment
- FSP program should have increased authority to take action that would be more effective in achieving compliance in cases where the payor is self-employed.
- something more should be done to ensure that payors do not just transfer assets to someone else's name.

These difficulties have been noted by the FSP program, and a legislative reform package has been initiated (hopefully to be introduced in the Fall of 1993) that attempts to address these concerns by providing effective and efficient mechanisms for tracing payors and their places of employment and enforcing support orders against them. Licence withholding, for example, requires the payor to take the initiative in contacting the FSP program and arranging a repayment plan, where as most enforcement remedies require the FSP to first find the payor and then take additional steps to enforce the order. The legislative reform initiatives include:

- Licence Withholding: -involves the withholding of professional, occupational business, driver's and other licences from support payors in default
- Employer Reporting: -involves requiring employers in certain high turnover industries to periodically report the names of newly hired employees to the FSP

- Garnishment of Joint Bank Accounts: -provides for the garnishment of 100% of both "either/or" and "and" accounts with no holding of the funds of the bank. The model gives the non-debtor account holder the right to make a claim against the debtor for funds wrongfully taken either in the context of a garnishment dispute or through a separate action between the account holders.
- Increasing on-line access to data banks: -involves negotiating agreements for access to a number of key provincial and federal data banks such as CORPAY, MOH Health Cards, Ontario Assessment System, MR, PENPAY (Ontario Pension Board), OUTDOOR CARDS, MNR, Workers Compensation Board, Canada Post, Department of Justice and Employment and Immigration Commission.
- Transfer of property to avoid payment of arrears: -would allow the court to add as a party to a default hearing, a person to whom it is alleged the debtor has transferred property for less than fair market value.

Assigned cases

As Chart FSP 2 (Collection Percentages) demonstrates, the capability of the program to collect in cases where the money is assigned to the Ministry of Community and Social Services is much lower than on the total caseload. This is not a surprising finding for three reasons. First, workers note that these cases are often older court orders being brought forward for enforcement. Second, they may be new orders, but the recipient has lost touch with the payor many years ago, has little or no information about the payor and the trail is old and cold, rendering trace and locate efforts often ineffective. Thirdly, ongoing information is often not brought to the attention of FSP as the recipient has no direct connection to the program.

It should be noted however that efforts are not hopeless on these cases. The "blitz" on these files conducted in 1991-92 resulted in a 69% increase of receipts returned to the Treasurer (increased from \$13 million in 1990-91 to \$22 million in 1991-92, see Chart FSP 1, Three Year Overview).

Receipts returned to the Treasurer of Ontario in 1992-93 amounted to \$28.4 million. This relates to about one-third of the caseload of FSP and represents about 33,500 cases. Based on the average one-child single-parent household Family Benefits amount of \$14,400/year, this amounts to an expenditure of approximately \$500 million paid out by the Treasurer to support these families. The return therefore is about 5%.

Client expectations

Clients state that they are uncertain what to reasonably expect from the FSP program. Messages contained in pamphlets are mixed:

"you are a key partner"

"we need your help"

"we do not have case workers"

"we are unable to communicate
individually with each of our clients"

Recipients are often left wondering how to be a partner, and form their own opinion as to what the program should be able to do for them. Some of these opinions were formed over the history of the program when initial messages such as, "you will receive a good government cheque" were given. Recipients do not understand why the FSP program cannot immediately ensure that the details of the court order are fulfilled (and on the first of the month!) or that business is not carried on in the same manner as mortgage payment deductions.

Staff relate that generally client expectations are unreasonable considering resources available to the program. Staff feel that it is unreasonable to think that they have time to act as case workers and listen and be encouraging to clients who are often in a state of stress, disillusionment and despair. Clients appear confused about the role of various staff within the program.

The FSP program has made attempts to better define what the program can and cannot do and thereby refine client expectations. The most recent brochures available to clients reinforce messages such as:

- we cannot guarantee that you will receive the support payments owed to you
- we cannot change your support order or agreement in any way
- FSP is a neutral government enforcement agency which cannot give you legal advice and does not act as the lawyer for you or the payor
- FSP does not become involved in child access or visitation provisions or disputes
- we are unable to communicate individually with each of our 110,000 clients.

ACCESSIBILITY

Physical Aspects

The FSP program is physically accessible in the immediate environs of the eight regional offices only. The program is not easily accessible to those who are outside of these eight centres. Some clients complained that even if they were in the same city, it was difficult to reach the office, find parking, drag the children along, or take time off work to get there between the hours of 8:30 a.m. and 4:30 p.m.

Once clients reach the offices, there are often long line-ups at the counter. Since the counter is open, there is no privacy to talk about the very personal matters of support. Payors dislike being "glared at" by the recipients in line.

Telephone inquiry

Clients prefer to speak to live agents at Central Inquiry to get their questions answered. Clients and staff both identify that counter service is a second resort after failed attempts to reach a live agent at Central Inquiry.

Central Inquiry is only available in areas of the province which have touch-tone service and to individuals who have touch-tone phones.

Central Inquiry improvements early in 1993 have resulted in handling five times as many calls as was the case the previous year. Callers are choosing the automated system 60% of the time (actually understated if the factor of re-dials for a live agent is considered); 16% of calls come in after 4:30 p.m. when only the automated system is available. On average, live agents handle 500 calls per day and 9000 are handled by the automated system. That is, factoring out re-dials, 95% of calls are directed to the automated system by the client.

Only 8-10% of callers attempting to contact a live agent actually get to speak to one. A large portion of callers are told to call back as all lines are busy, creating a number of re-dials - clients talk about having to try six to ten times a day to get through. Once through, clients may wait on-line 10 to 20 minutes or more to actually speak to a live agent.

CLIENT ACCOUNTABILITY

Accountability appears to be weak in some areas. Recipients expressed concerns about the lack of explanations about delays in receiving money and calculations of payments. For example, monthly cheque amounts may vary and there is no explanation given.

Consequently, the recipient is left to wonder if there has been a mistake or if this amount is what might be received the next month as well. This makes it difficult for clients to budget accordingly.

RESPONSIVENESS AND FLEXIBILITY

Sheer volume and backlog are prohibitive to responsiveness to clients - resulting in delays throughout the process. Enforcement representatives carry an average caseload of 1200-1500 cases, which can represent several clients/contacts per file - recipient, payor, respective lawyers, income sources. New policies have been put into place which have helped reduce the amount of activity on files as well as the number of cases. Examples of these policies include closing a case if a recipient cannot be found after appropriate attempts; restricted action on following-up estates. However, enforcement representatives maintain that their caseload is too heavy.

Payors and recipients express concerns that counter staff do not have the answers to their questions and one needs to talk to enforcement or management staff. Clients relate that it appears to be an imposition to talk to other than the counter staff, even when other staff are "milling" about and the counter staff cannot answer their inquiry.

The FSP program has introduced a policy of voluntary arrears payments with payors. The payor may present a financial statement and a proposal of how he/she can make payments to reduce or pay off the arrears. The FSP program reviews the material and accepts the proposal or negotiates changes as appropriate. Staff report that payors are pleased with the opportunity to have input rather than have the alternate up to 50% of income rule applied arbitrarily. Staff think that these arrangements increase the possibility of collecting arrears. Although there is a workload factor for the program, these negotiations are thought to save on enforcement action (when payor defaults on paying arrears) and on costs of litigation (when payor presents a motion to court on the basis of hardship to have 50% of his/her income deducted). Recipients on the other hand, have varied views on these arrangements. Some feel that arrears should be collected at the maximum rate possible with no room for negotiation. Others feel that getting something towards arrears is far better than receiving nothing and risking arrears becoming old and a potential target to be wiped out in court.

Although the majority of clients using Central Inquiry use the automated system to inquire about when the last payment was made or about outstanding arrears or latest enforcement action, there are a significant portion of people who want to speak to a live agent. Individuals want to talk to someone who can take information from them (new address, hot tip on payor's place of employment, etc.) or help them sort out the appropriate next step. Central Inquiry agents can certainly take the information and frequently can sort out details of the case from the information on MECA. In order for any action to be

taken further, the Central Inquiry agent must refer the information to the appropriate Regional Office. Clients express frustration at reaching merely a go-between and feeling unsure about what, if any, action will be taken. A further frustration is that all the information the client would like is not available to them due to the Freedom of Information and Protection of Privacy Act (FOI) restrictions on the disclosure of third party personal information.

A number of comments were raised by recipients, payors and family law lawyers about this program being mandatory, that is, if there is a court order, then there is a standard deduction order (SDO). If a payor does not wish to have support payments deducted from his/her income, an order suspending the operation of an SDO may be obtained under s. 3.4 of the Family Support Plan. There are two grounds for obtaining a suspension order:

1. the court must find that it would be unconscionable to require the payor to make support payments through an SDO; or
2. the payor and the recipient (and assignee, if any) agree to a suspension order, in which case the payor must post a security deposit with the FSP in an amount equal to at least the support payable for four months.

A suspension order merely permits the payor to make support payments to the FSP rather than by way of income source deduction. Clients express concerns that there is no way to fully withdraw even with all party agreement. They further complain that with the flow of payments through FSP they experience delays in receiving the money. Recipients and payors state that they were realizing regular flow of support before they went into court to obtain a divorce, on the advice of their lawyers included support as part of the order, and are now experiencing months of delays before the money begins to flow through FSP. Once it starts to flow, it does not always come at the same time every month. Family law lawyers argue that there is currently a two-tier system in that private agreements are possible. However, if one ends up in court for anything, then there is no full withdrawal mechanism, even if all parties agree. Several other jurisdictions such as Manitoba and British Columbia have a full withdrawal mechanism.

Clients and family law lawyers have also expressed the desire for the FSP program to be able to accept variances to the order on all party agreement without having to go to court. Clients felt that they did not have the time or money to be running back to get a changed order, especially when they have agreed with the other parties on the changes. Lawyers also felt that the rules for civil procedure of presenting an application to vary, preparing minutes of settlement, and obtaining a new issued and entered order from general division are onerous and expensive (paper work and time may lead to lawyer's fees of \$1000 or more). It is less formal and costly if it is a matter before provincial court (cases involving support, custody and access only - not involving property or not a divorce

proceeding).

There is also the possibility for and tendency by some family law lawyers to prepare a separation agreement as a vehicle to amend a court order. This process is less onerous and can amend the terms of the court order, and can be filed in provincial court where the rules are more relaxed. However, family law lawyers expressed their preference that FSP be able to accept the all party agreement and enforce it accordingly. Both clients and lawyers recognize that this agreement needs to somehow officially amend the court order. There could be potential problems if the court did not recognize these changes when the order came to their attention for other purposes. It may also invite court challenges when one or other party change their mind. It is important to ensure that each party has had independent legal advice (or has waived the opportunity) and that any amendment is very clear about the details of the order that require change, and their impact. These aspects are now accomplished by going through the rigour of changing the court order. These protections for the individual are recognized by FSP in that the program can only enforce a court order or separation agreement. Minutes of settlement or an offer of acceptance are not grounds for action for the program, that is, FSP can act only after the details have been issued and stamped in the court (does not necessitate going before a judge).

There is hope that some of this time and expense may be relieved if there is a move to establishing a Unified Family Court. It has also been suggested that the rules of civil procedure could be changed to allow clients to take more responsibility for themselves, with protections that the all party agreements must show that each party has had the opportunity of independent legal advice, and that details of the amendment clearly speak to all elements of the original court order.

Meanwhile, the FSP program strives to be flexible on these matters by:

- having the option for the recipient to withdraw from the program and not have the details of the court order enforced
- accepting a new statement of arrears from a recipient (allows all parties to agree to reduced payments for a period of time)
- accepting all party agreement on when the support obligation has ended, if the court order does not say anything about when support terminates

FSP staff stress that any considered changes in FSP processes need to ensure that they do not:

- put FSP in a conflict of interest
- contaminate the neutral position of the program
- usurp the judicial role
- require any further workload such as monitoring income or creating the need for an appeal mechanism.

RESPECTFULNESS

Reports are varied. Sometimes staff are congratulated on their respectfulness to clients, and, on other occasions, clients stated that staff are discourteous, curt and disrespectful. Clients also note that on occasion Central Inquiry agents do not always proceed with the empathy expected in their circumstances.

The structure and facilities of regional offices are also inhibitors to respectful client service. The counters are open to a line of people behind them, leaving one to talk about their private matters in public. Payors and recipients may have different wickets at the counter, but the close proximity affords no real division or privacy. There are small interview rooms, but they are rarely used and only if meeting with someone else in the office like the Enforcement Manager to go over the file. Clients indicate that it is discouraged to use this route.

TIMELINESS

Recipients raised concerns about the delays in receiving their payments, even when regular payments were under way. They call in to the Central Inquiry service consistently to find out if and when a payment has been made so they can plan their budget accordingly. The Resource Planning Section is currently moving toward the introduction of electronic funds transfer. Staff and clients have high expectations for the positive impact that this will have in reducing the delays in cheques being received. The ability of payors to make payments at the bank and FSP to receive an electronic file from the bank is also aimed at streamlining the process and therefore reducing delays.

Vociferous concerns were raised from recipients, payors and staff about the delays in cases of Federal Garnishments. Payors talked about having the payment come off their UIC six or eight weeks past and not yet being forwarded to their children through FSP. FSP staff expressed frustration at the weeks and sometimes months before any monies were forthcoming through the federal system. It is understood that attempts have been made to seek relief from this situation, but no satisfaction has been received from the Federal Department of Justice which channels all the federal funds to the province. The ability to move to an electronic transfer system between the federal department and the province may reduce the workload of manual entry on the FSP system and thereby reduce

the delay by days. However this will have no impact on the longer delays.

Staff with the Income Maintenance Program, Ministry of Community and Social Services, seek information on clients on family benefits (FBA) and with the FSP program on a consistent basis as part of the eligibility of clients for FBA, and as part of their thrust to ensure that all sources of support are explored before resorting to full support through FBA. MCSS workers are frustrated to be frequently calling FSP and FSP workers express that this is a time-consuming workload for them. Direct inquiry capability for MCSS workers is being established in FBA offices which is aimed at making these steps more efficient and effective for all parties.

A2. Criteria for a Client-Focused Organization

Individuals in the regional offices appear to be committed to the mandate of the program. Some staff spoke to the satisfaction of getting a case to the point of regular payments flowing and/or successfully negotiating a voluntary agreement with a payor to begin paying against arrears. Staff made the link between their actions and the goal of reducing child poverty. Staff spoke to a role in recognizing support obligations as a legal, economic and social imperative.

Staff feel pulled between being expected to give good client service (which is interpreted by them as listening to the client's complicated circumstances) and the expectation of taking actions to enforce the court order to ensure the monies are flowing. Staff often relate that no matter what they do, clients will not understand the complicated process.

Staff remarked that they did not always feel that they had the tools to do their jobs - they want increased knowledge of the program across functions, training in areas such as time management and handling of stress. Staff also felt that they could be trusted to do their work and did not need the level of "checking" and approvals that occur in the system.

B. Criteria to Establish Well-Being

REFERRAL

Print material prepared for recipients and payors clearly point out that the FSP program is a neutral government enforcement agency and cannot give legal advice or act as the lawyer for the payor or recipient. These materials cite examples of circumstances that are private legal matters and refer the payors and/or recipients to their own lawyers (legal aid, where appropriate) for help.

C. Criteria which Ensure Rights

FOSTERING

The FSP program engages in public awareness campaigns such as television commercials to promote awareness of family support obligations as a legal, economic and social imperative. There has not been an opportunity to evaluate the success of the most recent television campaign which ran for about a month. Recipients are very pleased to have these campaigns as they think that the result will be an easier outcome for them. Payors, however, feel these commercials portray them in a stereotypical or negative manner.

EQUITY

There is a perception on the part of recipients that the system and FSP favours the payor in areas such as tax implications and lack of penalties for payors. For example, in the instance where a payor goes into default, there is no additional cost to the payor; meanwhile the recipient needs to borrow money and pay interest to cover the payments not received in order to continue day to day obligations for herself and the children. Recipients through the self-help organization Support for Custody Orders Priority Enforcement, are preparing briefs to the Federal Government on this issue. However, it still arises in any discussion of the FSP program as recipients perceive the issue as part of receiving child support.

There are few policies available to clients on how the program will respond. Therefore clients feel at the whim of the particular person who is working on their case and feel that different people in the program give them differing answers. There are operational policies outlined in the Guide to the Family Support Plan given to clients when they enter the program. This guide book seems to be rarely referred to or understood. It also does not speak to standards in terms of time-frames in which the program will respond. Central Inquiry informs clients that they cannot expect action within thirty days of information being relayed to the program. Clients often call back within the 30 days (can now be noted and tracked on the system), which is an indication of their intolerance of this time-frame. Manuals are being drafted by FSP that will include enforcement policies and procedures for consistent application across the province. These have not been finalized, and have been seen to be for internal use only as opposed to also being shared with clients.

Recipients, payors and lawyers speak to using the route of approaching their local MPPs or the provincial Ombudsman Office to assist them in getting attention from the FSP program on their case. Staff report that these cases get priority and quicker action than if they had not approached an MPP. There are client service staff in each regional office and in head office who spend considerable time responding to these inquiries. Staff and clients recognize that it is a result of volume and backlog that impel clients to resort to

this route to get the service to which they are entitled.

Multicultural Aspects

It is happenstance if there are personnel that can relate to racial minorities and ethnic and recent immigrants whose first language is not English. Forms are only available in English and French and many clients may need assistance in filling them out, but it is up to the client to find help for translation. Pamphlets for recipients and payors are available in five languages other than French and English.

D. Criteria which Focus on the Community

STAKEHOLDER INTERESTS

With the introduction of the Bill 17 (March 1992), the FSP have made concerted attempts to outreach to the legal community, and to a lesser extent income sources, to ensure that the legislation is being interpreted and enforced appropriately. Brochures and materials have been prepared with a view to increasing the probability that support orders are "enforcement friendly" and consequently will be able to be more successfully and efficiently collected. Staff of the program think that recipients and payors are getting less than desirable directions from the Bar in terms of having orders that can be reasonably enforced as well as having reasonable expectations of what the FSP can do for them.

Through the Canadian Payroll Association (CPA), a number of observations came forward from the point of view of income sources:

- the introduction of a dedicated 1-800 number for employers has been seen as a welcome improvement as employers no longer have to call back and wait for the 10 or 20 minutes or more to speak to an agent at Central Inquiry
- over the course of the year since the new legislation (SDOs) was introduced, there has been improvement in that more consistent interpretations are being given as opposed to the answer varying by office or person
- equalized billing has been a very positive change which allows employers more ability to build the payments into their automated payroll systems
- there is still some confusion in the calculation of arrears --information could be clearer on this subject.

The CPA itself expressed that complaints and questions on their information lines were lessening over time. The CPA is pleased to be involved in the review of materials for income sources and wishes to continue in this advisory capacity to the FSP program. The CPA representative also expressed that CPA could be more involved in transmitting information to employers. They feel that they have a good opportunity to get information out consistently and quickly to a large number of employers (membership of 1800 employer companies in Ontario).

Family law lawyers are requesting phone-in ability for them, particularly on cases that are going to court. They recognized the folly of creating a two-tiered system where they may be able to get more information than the client can get for her/himself.

E. Criteria which Position Programs On a Continuum of Supports

DISTINCTIVENESS

The FSP program can be described as a program of first resort. If there is a court order that includes a support order, then the matter is automatically forwarded to the FSP program for enforcement and withdrawal is difficult and partial. The only way to avoid the program is to have a private agreement between parties.

Over the six years of operation as SCOE and now FSP, the program has attempted to be all things to all people. Recipients are viewed as being in a state of despair, disillusionment and stress. Consequently, the program has felt an obligation to provide personal contact and instill a sense of security leading to a stable personal life and confidence in the services the program is able to offer. This "relational" approach to services is seen by the program as an appropriate government role. Anything less could be seen as neglect by government.

At the same time, recipients complain most often about not receiving their support payments and relay their compelling stories to encourage the FSP program to take prompt action to that end. Recipients want a "transactional" service of having the money flow. One might compare this to a gas consumer wanting the gas to flow during the cold winter months on a regular basis. When it is not flowing, customers complain and relate compelling stories of having an older person or infant who may quickly be vulnerable without service.

Staff of the FSP program very much recognize their mandate to ensure that payments are flowing to the custodial parent and the children. This creates systemic and endemic schizophrenia for the program - is it a relational or transactional service?

The program is able to distinguish itself from a welfare program and clearly the program is distinct from the Income Maintenance program delivered by MCSS. In 1987 at the inception of the FSP program (then SCOE), the lines were drawn between MCSS assisting applicants for Family Benefits to obtain court orders, and the FSP program enforcing the orders once obtained.

However, there remains the pull in two directions - focusing resources on personal contact with the clients or on the collection of child support payments.

LEADERSHIP

Public awareness programs and outreach around the introduction of the new legislation in March, 1992 are examples of the FSP program providing leadership in the awareness of support as a social, economic and legal imperative in the fight against child poverty.

There are other opportunities for FSP to carry this torch and, for example, to assist the Ministry in working with the federal government. Discussion is needed in areas such as the tax implications of child support.

LINKAGES

Within the Ministry of Community and Social Services, there is a program of Parental Support Workers (approximately 100 across the province) who assist potential or existing Family Benefit recipients to obtain a support order or negotiate support agreements. The primary purpose of this program is to ensure that other sources of income are pursued before individuals go on Family Benefits. If a court order is obtained, the case is referred to FSP for enforcement. This results in assigned cases to the MCSS. These 33,500 cases represent about one third of the FSP caseload. Parental Support Workers' functions have some of the same aspects as FSP functions in the areas of: requiring legal advice; trace and locate functions and; public awareness.

A coordinating committee exists between MAG and MCSS to discuss common issues such as sharing information. FSP staff express concerns that one of the difficulties in the success of enforcement on these cases is the lack of information on which to proceed. This begs the question of whether there are opportunities to work more closely together between the programs in order to up the ante of more enforceable orders. This particularly comes to mind in the area of trace and locate and the enhancements in the ability of FSP to carry out this function.

PUBLIC EDUCATION

Recipients expressed the need for ongoing public education as well as education particularly aimed at the Bar and judiciary. They feel angry because they feel they are fighting this social responsibility on an individual basis. They feel like victims. They want zero tolerance for non-payment. They want the public messages to be as strong and consistent as the "don't drink and drive" campaign messages have been. While there is recognition for the attempts made by the FSP so far, there is a definite desire for augmented effort toward the understanding of the moral and social obligations of supporting one's children.

F. Criteria for Cost-Constraint and Administrative Simplicity

COST-EFFECTIVE CRITERIA

Staff spoke about a number of areas which could be explored toward a goal of making service more cost efficient and directing resources to essential services:

- possibilities to further reduce the redundancies between regional and head office functions, especially in the areas of client services and finance functions;
- possibilities to stop doing some things - activities that are not really necessary toward accomplishing the main mandate and often create more workload, expense and frustration on the part of clients. An often mentioned example of this type of activity is the production of annual financial statements. Staff noted that the production of these statements generated considerable questions and frustration on the part of clients who felt they were not correct. For example, a payor may wish a late December payment to be noted within the calendar year, but the FSP may not show the payment until it was received by the program in January of the next year. Another difficulty was the number of statements that are not received by the client and returned to the FSP program, due to incorrect addresses. Meanwhile, these statements serve no official purpose as they cannot be used for income tax purposes;
- the need to further explore the interactions between Central Inquiry and Regional Offices. The ability of Central Inquiry to update addresses and note if the client has called, have reduced the number and redundancy of memos flowing to the Regional Offices. However, this system is still seen as generating workload as opposed to streamlining work flow;

- possibility to reduce workload volume of legal staff by not enforcing child custody agreements, leaving this to the individual to pursue with private lawyers or through the police. It is stated that this work represents about 3% of the legal workload.

S.14 of the Family Support Plan Act provides that money paid on account of a support order shall be credited a) first to the principal amount most recently due and then to any interest owing on that amount, and b) then to the balance outstanding in the manner set out in clause a).

This results in older arrears building up and not being addressed which often can lead to payors going back to court and having old arrears wiped out, arguing insurmountable and unrealistic debt. Meanwhile, the recipient does not feel that the FSP program has acted well on behalf of the recipient's interests. Recipients feel that if the older arrears were addressed first, then there is more likelihood that all arrears may be eventually paid.

This manner of accounting also results in complications within the FSP. Old accounts can never be destroyed and the automation of the application of interest is impossible. The files and automated accounting system are thus overloaded and complicated.

G. Broader Corporate Criteria

The staff of the FSP has been directing its attention to internal program issues, particularly over the past year with the introduction of the new legislation. FSP operates quite independently in the ministry, with its own resources for client service/communications/public awareness as well as dedicated technology support.

The program acts quite independently of Courts Administration, the division of which it is a part. As noted earlier in this report, there is some opinion that as a litigant before the courts, FSP is in a conflict of interest by being part of Courts Administration.

FSP has little contact with other programs which offer service to ministry clients.

RECOMMENDATIONS

POLICY

1. Further explore policies that will define what is "practical to enforce", particularly in the area of long-standing arrears with a view to removing aged arrears from the books and avoiding the build-up of future backlog. These may include:

- introducing a rule for all new cases, such as is exercised in Alberta, which states that arrears greater than ten years old will not be enforced by the FSP program
- allowing the discretion to not enforce arrears on all cases where the arrears are three years or older, based on business guidelines that are developed with the assistance of the Ministry of Government Services Central Collection Service

Outcomes:

- reduced backlog/volume of workload
- avoidance of build up of future backlog
- more time to concentrate on cases which have a greater likelihood of success
- more realistic expectations of the program

2. Finalize manuals that include enforcement policies and procedures for consistent application across the province.

Outcomes:

- increased understanding of what the program can do
- equitable and consistent approach across the province

3. Prepare "fact sheets" for recipients and payors, and stakeholders (in particular, the legal community) that outline the various policies of the FSP program. The information should include clearly what the program can and cannot do and what the role of the client is in the process. There should also be an indication of the time-frame for any actions. These materials should be tested on panels of racial and ethnic minority groups to ensure relevance to all groups.

Outcomes:

- increased understanding of what the program can do

- more realistic expectations of the program
- increased ability for clients to be a partner in the process
- increased accountability to clients

4. Pursue opportunities for streamlining the front-end process by:

- simplifying introduction materials (guide, filing package). Some ideas on simplifying the guide have been to separate the English and French text and only send out the requested language version; dividing the text into portions of what is needed information at the outset, and perhaps send out other topics as the need arises so that clients can more readily absorb the information which is relevant to them at the time. The content of these materials should be tested on panels of racial and ethnic minority groups to ensure relevance to all groups;
- requiring the financial statements from the court order to be attached to the standard deduction order and used as the primary source of introductory information. This information, if complete, would allow the program to proceed immediately rather than waiting for the filing package to be returned by the recipient or having to take more action to find the information;
- accepting the statement of arrears with the client's signature only, not requiring notarization (it is noted that this would require a legal change).

Outcomes:

- more expeditious initial process streamlines subsequent processes
- more timely responsiveness to clients
- reduction in accumulation of arrears due to process delays
- increased cooperation by clients who better understand how to help the program work for them

5. Explore further opportunities for user fees on behalf of the payor such as fees for NSF cheques, fees when account goes into default, and interest charges on outstanding amounts. Although it can be argued that collecting fees can be more

administratively costly than the fees collected, this needs to be balanced off with the likelihood that the deterrent itself will not necessitate huge administrative processes. Other jurisdictions such as Quebec, which currently charges fees, may be helpful in exploring this recommendation. In addition, consultation with the Fines Management Project may assist in looking at the implementation aspects of user fees. The current legislative reform package with FSP suggests such an initiative could apply any time action is taken to collect arrears, for example, a fee could be levied each time a writ of seizure and sale or garnishment was issued. It would be important to ensure that the recipient's interests were not adversely affected. This may be accomplished by recovering from the defaulter only after the support order is in good standing.

Outcomes:

- incentives for payors to pay on a timely and regular basis
- recognizes and defrays program costs resulting directly from the payor not proceeding in accordance with the court order
- increased perception of fairness

6. Support the Ministry in establishing a position on the tax implications of child support and put forward this position to the Federal Government in support of the client actions in this regard. Clients see all levels of government as one and do not distinguish between actions that are taken at the federal level as separate and distinct from the FSP program. Recipients see the tax implications as favouring payors in that payors are able to claim child support as a taxable deduction, whereas recipients must claim child support as income and this sometimes puts them up a tax bracket and discourages them from working. Recipients are lobbying for child support to have no tax implications for either party. They feel that this would have the same implications as two-parent families living in the same household.

Outcomes:

- increased perception of fairness
- increased neutrality for all clients (payors, recipients)

7. Explore and understand the way other jurisdictions (such as Quebec) made their decisions and assess the impact of establishing a policy of a standardized cost of

living clause (COLA) for support orders. It is important to consider respect for individual's rights to establish agreements within their own circumstances.

Outcomes:

- potential increased administrative simplicity and therefore reduced delays in introduction of COLA

LEGAL

8. Establish an option to totally withdraw from the program on agreement of all parties (FSP would not act as payment agent) excluding cases assigned to the Ministry of Community and Social Services since it is assumed that government funds should be pursued.

It is recognized that the decision for a mandatory option was indeed a political decision. However, there is a need to revisit this decision in light of the current expenditure reduction requirements and in view of the fact that clients (particularly recipients) are asking for this option.

Outcomes:

- reduced workload and ability to concentrate on those cases really requiring government intervention
 - empowerment of clients to handle their own responsibilities in regard to payment of child support
9. Pursue proposed legislation which addresses difficulties in collections in cases where payor is self-employed, including:
 - license withholding
 - employer reporting
 - garnishment of joint bank accounts
 - increasing on-line access to data banks
 - transfer of property to avoid payment of arrears.

As this legislation goes forward, it is important to consider ways to minimize the potential impact of increased litigation before the courts.

Outcomes:

- increased equitable enforcement
- streamlined processes and reduced work load

10. Pursue the introduction of incentives for payors to fulfil their obligations such as non-payment being noted on their credit rating. As is noted in the FSP legislative reform package, the Freedom of Information and Protection of Privacy Act (FIPPA) could be amended to permit FSP to report defaulting payors to credit bureaus.

Outcomes:

- increased compliance
- reduced enforcement action

11. Cease to enforce custody rights for the parent who has custody of the child or children. These actions currently are a small part of the business and only take up about 3% of legal staff time. However, it does open the door for clients to see the program as not acting neutrally and also leaves the plan open to the interpretation that access is connected to the support obligation.

Outcomes:

- clarity of program expectations
- reduced legal actions

OPERATIONAL

12. Make improvements to Central Inquiry:

- extend hours of live agents to be available until 8:30 p.m.

- increase attention to information available on the FSP main automated system (MECA). That is, ensure that all regional staff are putting information on all automated screens so that CI agents have full information available to answer questions for clients
- date the available enforcement action information and ensure that only current information is given out (currently information could be from the beginning of the case and no indication is given as to when the action was taken, so clients get their hopes up only to find out it was merely old news)
- consider upgrades of job classification to reflect the increased reliance on Central Inquiry as the main contact for clients
- enhance training for agents with particular attention to training on the special needs of racial, ethnic minority and aboriginal people
- establish the possibility of access from dial phones and explore the possibility to permit access from TTD phones
- establish the ability for the Central Inquiry agents to directly forward the messages from the client to the immediate attention of the appropriate enforcement officer via electronic mail system (imminently possible and not very expensive if the program is centralized within a local area network)

It is further recommended that the Central Inquiry service be centralized in one location to ensure maximum flexibility of available live agents. A number of smaller locations would compromise the ability of client service by limiting the availability of staff in consideration of backup for breaks, lunches, sick days and holidays. An analysis will be needed to establish the most desirable location from a cost effectiveness point of view in consideration of long distance charges.

Outcomes:

- increased ability to respond to clients in a timely and accurate manner
- increased ability to respond to racial and ethnic minorities and aboriginal people (phone contact often better than having to rely on contact in writing)

13. Streamline services provided to those necessary to collect the funds or enforce the order, for example, discontinue the practice of producing annual financial statements. It should be possible to print off the statement of account from MECA should there be an expressed need by the client.

Outcomes:

- empowers the clients to take on responsibilities in the process
- avoids workload in areas not within the mandate of the program
- avoids costs and confusion by all parties

14. Continue to pursue technological opportunities such as Electronic Funds Transfer, payments to banks which can be transferred by electronic file, and internal electronic mail for the program.

Outcomes:

- reduced manual workload
- reduced delays in payments being received by recipients
- ease of access
- more timely response to clients

15. Proceed with the planned review of MECA with a view to ensuring that the technology supports the business rather than drives or hinders the flexibility of the business. Current capacity problems, and difficulties with calculations of arrears and cost of living formula are examples of the need for an evaluation of options for the most appropriate technology to support the changing program.

Outcomes:

- cost effectiveness
- increased program flexibility and therefore responsiveness to clients
- reduced delays due to technological difficulties

16. Develop a new cheque format that permits explanation of the amounts as a fuller statement of the account by indicating ongoing and arrear payments.

Outcomes:

- increased accountability to clients
- reduced questions from recipients due to the proactive information

ORGANIZATIONAL

17. In response to technological and policy changes, conduct an independent operational review which will pursue options to redeploy resources. This review should look at opportunities to delay and streamline the work flow such as the work-team concept.

Outcomes:

- increased responsiveness to clients
 - more efficient and effective service
18. Conduct a joint review with the Ministry of Community and Social Services on the interactive functioning of the Parental Support Worker Program and the Family Support Plan Program. This review should explore the opportunities for greater support on the issue of avoidance/recovery of provincial funding within the overall goal of avoidance of child poverty.

Outcomes:

- improved information flow on assigned cases which will contribute to the ability to increase recovered funds

TRAINING

19. Enhance the training for all staff to ensure a consistent knowledge of the program across functions.

Outcomes:

- equity of service delivery
- enhancement of ability to do the job required

PUBLIC EDUCATION

20. Increase public education and awareness opportunities, including the legal community and minority communities.

Outcomes:

- increased awareness of family support obligations as a legal, economic and social imperative will ultimately reduce required government intervention
- increases the possibility of more readily enforced court orders
- reduced litigation in the courts
- fosters clients rights

INTERLINKAGES

21. Establish more regulated mechanisms for self-help groups/clients to provide advice to the program and play an informal advisory role. For example, this could be accomplished through holding regular meetings with these groups or providing information for their newsletters.

Outcomes:

- empowers clients to take more responsibility for themselves and provide support to each other
- places the FSP program as more of a last resort information and support source (not their primary role)

22. Continue to pursue improved processes with the federal government.

Outcomes:

- reduced delays in client receiving payments
- reduced workload

23. Explore the variances of court orders upon the agreement of all parties within the

context of the rules of procedure of a Unified Family Court.

Outcomes

- simplified and less costly processes for clients
- empowerment of clients to take on increased responsibilities for themselves
- fosters rights of children by encouraging the social obligation of child support

B. SUPERVISED ACCESS PILOT PROJECT

FINDINGS

A. Client Focused Service Criteria

A1. Traditional Client Satisfaction Indicators

NEEDS MET

The preliminary evaluation of the Supervised Access Pilot Project identified that:

Custodial Parents

- want safety for themselves and their children. On this aspect, Coordinators of the program report that custodial parents have been pleased, and there have been no unhappy incidents reported to the Agency and the Ministry. In some locations parents are uneasy due to the location of the parking facilities;
- are satisfied with the fact that they did not have to see the non-custodial parent.

Non-custodial parents

- want to see their children. These projects provide the opportunity that may not otherwise be there;
- like not having to see the other parent;

- expressed concerns about the facilities and equipment. Parents with older children especially found it difficult to keep the children amused since the programs are often equipped more for younger pre-school children;

Children

- infants tend to be upset at leaving the custodial parent and sometimes are observed as not liking to spend their time with the non-custodial parent;
- younger children (between four and ten) were thought to not understand why they were there and are upset when leaving the non-custodial parent;
- older children were seen to become easily bored and restless and want to go off the premises.

The evaluation will provide a more detailed assessment of the impacts of supervised access. Some questions which it hopes to address, are:

- What changes occur in access arrangements over time?
- Do changes occur in the feelings (hostility, anger) of custodial and non-custodial parents between the time they enter the program and several months later?
- Is there a change over time in the level of conflict, the frequency of contact, or in the perception of one parent by the other?
- Is there a change in the child's behaviour between the time the child enters the program and several months later?
- Is there a change in the legal process as a result of the supervised access program? What cost implications do these changes have?
- How satisfied are custodial and non-custodial parents with different features of the supervised access program?

ACCESSIBILITY

Knowledge of the service

Unless family lawyers and courts are aware of and support supervised access and make referrals, families will probably not be part of the programs. This knowledge varies from community to community as each program sponsor is responsible for awareness of the program.

Availability of the program

There are only 14 sites across the province, rendering the service inaccessible to most Ontarians. Furthermore, the evaluation report notes that four of the project sites have waiting lists.

Hours for visits/exchanges

Eight programs provide some weekday supervision for parent/child visits. Monday to Friday visits usually occur during early evening hours (5:30 p.m. to 7:30 p.m.) on either one or two nights. Only three of these programs provide full day services on Saturday and Sunday.

The remaining programs schedule supervised access visits only on weekends and usually for only part of each day.

The restricted hours of operation of most programs impose limitations on the number of families who may use the service.

RESPONSIBILITY AND FLEXIBILITY

Of importance to the children and visiting parents are the toys and equipment available to them. Seven of the sites have outside areas available to the families. However these areas are generally small and equipped with activities for children under ten. There is little space for games such as football. In other programs, all visits take place inside. The programs are reasonably equipped with toys and activities, although again these are most appropriate for younger (under ten) children. It is suggested by Coordinators that older children tend to become bored and need more space in which more energetic activities can be undertaken.

A2. Criteria for a Client-Focussed Organization

ATTENTION TO STAFF SUPPORT

Coordinators, staff, and, to a lesser extent, volunteers, are qualified to provide supervised access. Staff members and volunteers generally have an undergraduate degree or community college diploma/certificate. Many have worked in a variety of areas related to the provision of services to individuals and families.

The amount of initial training for staff was varied and ranged from none at all to between 11 and 20 hours. For those receiving training, the main topics addressed were the philosophy and procedures of the program, dealing with angry clients/crisis intervention and safety. In-service training also varied from program to program. No staff member received more than four hours of training each month.

The type and amount of training given to volunteers was similar to that given to staff. However, fewer volunteers than staff received training in dealing with angry clients/crisis intervention.

Staff and volunteers expressed a preference for more training before starting their jobs. The training needs focus on the program as a whole as well as on specific functions in the program such as safety, interacting with children, and crisis intervention.

B: Criteria to Establish Well-Being

REFERRAL

The projects do not refer as a matter of course to other services. Parents may need additional services, but the question arises as to whether the projects should refer to other services. The risk is one of the projects losing neutrality by taking one parent's side or forming an opinion of the ability of one of the parents.

C. Criteria which Ensure Rights

EQUITY

The Coordinators of supervised access programs have engaged in a number of activities to inform communities of the service. These activities have included meeting with local groups, sending out letters and fliers to interested parties, and meeting with individual lawyers and judges. Other community awareness opportunities have involved speaking engagements, local newspaper articles, and local radio or television interviews. These

activities have been limited by the time demands of arranging and supervising the operation of the program.

However, knowledge of the programs by potential users, and potential referring agents varies considerably across the province.

PROTECTION

Following each visit, supervised access programs are required to complete an observation note in which factual events during the visit are described. These notes are used when lawyers and the courts ask for information about families participating in the program. The number of requests for these notes vary considerably across sites from no requests to weekly requests from lawyers.

Coordinators and staff remark that these notes:

1. are a threat to neutrality. The requirement to testify in court threatens the perceived neutrality of the supervised access programs
2. present a limited view of the family and therefore may have questionable usefulness in court. The observation note focuses upon the relationship between the non-custodial parent and child(ren), and does not include information about the relationship between the custodial parent and child(ren). In addition, all observations occur in the context of the artificial environment of supervised access
3. are time consuming. It takes considerable staff time to fill out the forms, supply information based on the observation note to courts and lawyers, and testify in court.

D. Criteria which Focus on the Community

CITIZEN ACCOUNTABILITY

There is an Advisory Committee for the projects which is a centralized committee speaking to the policy aspects of the service. This group reviewed proposals for funding and selected sites. The Committee will also be used to review the evaluation and make recommendations for the future of this service. The projects within established agencies are also responsible to the boards of those agencies.

E. Criteria which Position Programs On a Continuum of Supports

DISTINCTIVENESS

Family law lawyers and community agencies relate that it is difficult to find a neutral party to provide a safe, neutral and child-focussed setting for visits between a child and non-custodial parent or other family member. A similar service is provided by the Children Aid's Societies for families who are clients of the CAS. If families are receiving service from a CAS, they are ineligible to receive service from one of the Supervised Access sites (avoidance of duplication of service).

F. Criteria for Cost Constraint and Administrative Simplicity

The projects can charge user fees, with a limit of \$25 for a visit or exchange and \$50 for a report. These fees must be waived if the family cannot pay (in the judgement of the agency).

Lawyers and judges think that the supervised access projects will save time and money in the courts by keeping motions from being put forward on access issues.

RECOMMENDATIONS

As stated at the outset, the Supervised Access Pilot Projects were not rigorously reviewed as part of the Social Justice Review in view of the fact that an ongoing evaluation is in place for these projects. Consequently, rather than present recommendations at this point, this review offers some questions for consideration from the viewpoint of the Social Justice Review. These comments may well form part of the evaluation. They are organized in relation to the review criteria.

NEEDS MET

The central mandate of the program is to provide a safe, neutral and child-focussed setting for visits between a child and non-custodial parent or other family member. Does this narrow mandate indeed meet the needs of clients? Are there other impacts or outcomes which should be expected from this type of service?

The evaluation is to provide a more detailed assessment of the impacts of supervised access in the following areas:

1. changes in access arrangements over time

2. changes in the feelings of hostility and anger of parents after being in the program
3. change in the level of conflict, frequency of contact, or in the perception of one parent by the other
4. change in the child's behaviour over time in the program
5. change in the legal process as a result of supervised access program (avoidance of costs)
6. satisfaction of parents.

Other outcome measures (not currently under consideration by the evaluation) which may be explored are:

1. the number and percent of withdrawals from the program by stated reason for withdrawal
2. what happens after withdrawal?
3. use of the program (numbers and types of clients)
4. usefulness of the observation notes in courts.

An exploration of these impact areas will help to assess whether the program is focussed on the right things rather than just doing a limited number of things well.

ACCESS AND EQUITY

The projects are only available to families if family lawyers and courts are aware of and support supervised access and make referrals. Physical elements of the projects render the projects more appropriate to younger children. Hours of operation limit the families who may be able to use the programs. Therefore three questions arise:

1. What is the role for the Ministry in supporting these projects through public awareness of the service? Or, is this more appropriately the role of the individual projects?
2. Should funding contracts be limited to those projects which can demonstrate accommodation for older children as well as younger children?
3. What are the optimum hours of operation to ensure accessibility for all families?

In addition, a number of questions about attention to diversity arise:

1. Do the projects make provision for children with physical disabilities (physically accessible facilities, etc.)?
2. Are staff be trained in child development and children's special needs?
3. Do the projects reach out to different aboriginal and multicultural communities?
4. Should staff be hired to reflect the communities using the project, or be trained in race relations, etc., to better serve the multicultural population?

COMMUNITY ACCOUNTABILITY AND PARTICIPATION

1. Is the advisory group representative of the mandate of the program? For example, if the service is child focussed, should there be members from children's rights advocates?

CONTINUUM OF SUPPORTS

1. Should these programs be positioned as a last resort option after family or friends have been considered?
2. Do these projects present less stigma and therefore should be available to all families, including those which may be receiving other services from a Children's Aid Society?

COSTS

1. Is it possible to compare costs by case for the fourteen projects?
2. Are the costs/resources reasonable for the level of service provided? Are the fees reasonable, given variance across the projects?

C. VICTIM/WITNESS ASSISTANCE PROGRAM

FINDINGS

A. Client-Focused Service Criteria

A1. Traditional Client Satisfaction Indicators

NEEDS MET

Previous Review Findings

In 1988, a Client User Satisfaction Survey of the Victim/Witness Assistance Program was conducted by Jamieson, Beales and LaLonde & Associates and R.R. Ross and Associates, and a Professional Opinion Survey was conducted by Lee Axon, Consultant. The surveys examined client experience and satisfaction with the Program and professional acceptance and satisfaction respectively.

During the interviews with professionals from five sites, it was apparent that the Program has mitigated the distress victim/witnesses have traditionally experienced during court proceedings. Many professionals stated that the Program has responded to a void in the criminal justice system.

In a telephone survey of 164 clients from seven sites, clients expressed consistently high levels of satisfaction with the Program's service. One of the primary functions of the Program is to provide clients with information so they can understand the court proceedings in which they will take part. The survey found that 85% of the clients interviewed felt that the information they received helped them to understand and anticipate court proceedings.

When asked to identify the two most important aspects of the Program, 66% of the clients interviewed identified emotional support as the most important aspect and case related information and assistance as the second most important aspect. The Program Coordinators were seen as the key to the humanizing element of the Program. Over 80% of the respondents found the Program's role as a mediator between victim/witnesses and Crown Attorneys helpful in relaying information back and forth. Of the people interviewed, 95% were satisfied or very satisfied with the specific service received from the Program, 96% indicated that they would use the Program again if needed and 97% indicated that they would refer it to others.

Current Review Findings

According to most of the Program staff, Crown Attorneys, police, and the two victim/witnesses interviewed, the Program meets client expectations most of the time. However, some Coordinators feel client expectations can be met because clients have low expectations, are totally at a loss and are grateful for any information and support.

Some of the Program staff stated that they did not know what clients truly thought of the Program's services as there is no regular evaluation where clients are the main source of information. Nevertheless, Program staff receive thank you letters, flowers, etc. on a consistent basis from victim/witnesses who have gone through the Program and staff consider this to be a measure of client satisfaction.

Program Coordinators routinely advise victim/witnesses at the beginning of their association with the Program what the Program can and cannot do for them. They strive to ensure victim/witnesses understand the parameters of the Program so that their expectations are reasonable.

One of the victim/witnesses interviewed (a 17 year old female) said she felt prepared, was treated as a somebody, learned about the court proceedings, was able to come to terms with the assault and carry on after the court case was over. Interestingly, in her particular case the accused was acquitted. She felt that a child without the benefit of this Program would have had a nervous breakdown.

The other victim/witness interviewed felt the Program offered invaluable information about the court proceedings and offered needed support and continuity for victim/witnesses. This victim/witness felt the Program should be expanded.

Some Program Coordinators noted that client satisfaction with the Program is sometimes directly related to the judge's verdict (ie. an acquittal versus a conviction) and has little to do with the service provided by the Program.

One Crown Attorney observed that in satellite courts, the chance of an acquittal is higher due to lack of time to prepare a case. The Crown Attorney felt strongly that victim/witnesses were not helped if they lost the case and that winning was the major victory for self confidence, satisfaction, and healing. Isolation prevents access to the Program. Furthermore, in a small town, victim/witnesses may lose their sense of well-being which results from assurances of confidentiality since everyone will know about the court case.

There is no statistical analysis available to determine the impact of the Program on conviction rates and guilty pleas although Crown Attorney interviewees felt that with the Program involved, Crown Attorneys and victim/witnesses were now better prepared for

prosecution. The Crown Attorneys understand the victim/witnesses' role more fully. This combined with victim/witnesses who have a better understanding of what to expect from the court proceedings results in more effective and positive court proceedings.

ACCESSIBILITY

The Program provides services to victim/witnesses in 13 sites across the province. It provides some degree of service to all victim/witnesses referred to these sites but focuses its services on victims of sexual assault, child abuse and domestic assault.

The Program's offices are located within the court office and maybe in areas left over from the Crown Attorney's Office. Therefore, clients reported that some of the Program's offices were not easy to find while other offices are not wheelchair accessible. Overall indications are that victim/witnesses feel the courthouse location is convenient and enjoy seeing a familiar face and having a place to wait at the courthouse. However, some social agencies report that their clients find the courthouse intimidating, and the fact that the Program's office is there detracts from its accessibility.

The distances between communities in the North and other isolated areas restrict access to both the Crown Attorneys and the Program. For example, there is a Program office in Sudbury, but victim/witnesses who live in the outlying areas have a difficult time travelling in to see the Program Coordinator. Distance, lack of public transportation, lack of funds for travel, or child care responsibilities are barriers to service for those victim/witnesses who live miles from the court location. The Coordinators are not encouraged to visit the victim/witnesses outside of the court location as outreach service delivery is prohibitively expensive and the workload demands at the site office are so high.

Program sites do not offer formal services to the satellite courts in the area. Victim/witnesses in more isolated areas lose on two counts: usually there are fewer community services to meet their needs and no court preparation services. In these areas the victim/witnesses usually will not see the Crown Attorney until the night before the court date. If the Program Coordinator goes out to the satellite location, she will arrive the night or the first day of court.

Some informants from social services agencies suggest that more outreach service delivery to provide information and support, for example the Coordinator visiting victim/witnesses such as children in their school or other familiar settings, might spread the service thinner but it would reach more victim/witnesses.

Most of the Coordinators felt that they should be doing more public education, but they simply did not have the time to do that as well as provide services to the victim/witnesses.

Program staff felt that one of the quickest ways to access clients is through bail court. As a result many Programs ensure that a staff member or volunteer attends bail court to identify victim/witnesses who are in need of their service and to go through the files to obtain the names, addresses and telephone numbers of the victim/witnesses. Program staff then send out a letter to introduce the Program to victim/witnesses of domestic assault, sexual assault and child abuse. The Program will also follow up with telephone calls to the latter two victim/witness groups to ask if they would like assistance. This practise of attending bail court has increased access to the Program.

Crown Attorneys and police who have access to the Program generally support the Program and see the workload benefits to them in their preparation for court. Therefore, they appear quite willing to refer victims to the Program for information and emotional support, thereby making the Program accessible to a larger number of victim/witnesses.

Some Program staff felt that clients who are familiar with the system have easy access to the Program, whereas clients not familiar with the system do not. Clients who are more aggressive, knowledgeable and inquisitive about their rights and standing are more apt to take advantage of the Program's services. Clients from minority language groups and different cultural backgrounds may be less knowledgeable about the Program and more hesitant to access the Program. The cultural and linguistic diversity of clients varies from one site to another. The Program has a general concern that it is not reaching various minority groups due to systemic, linguistic and cultural barriers. Aboriginals who constitute a considerable part of the client base in sites such as Kenora are hesitant to use a Program whose staff is comprised mostly of white, middle class women whose focus is different from the Aboriginal holistic concept of healing. On the other hand, some Aboriginal women have indicated that they preferred to confide in individuals who are not part of their culture as confidentiality is more assured with the Coordinator.

ACCOUNTABILITY

There is a general consensus that the Program staff have a mixed reporting relationship to the local Crown Attorneys and to the Provincial Coordinator. This is not reflected in the Program's mandate or organizational chart, but the confusion appears to be due to the dual purpose of the victim/witnesses. A victim/witness who is a victim/witness for the prosecution is more valuable to the Crown Attorney if properly prepared to give

evidence. The Program, whose mandate is to support victim/witnesses and promote their well-being, invariably helps the Crown Attorney by providing better prepared, more empowered victim/witnesses.

The Crown Attorneys, although empathetic to victim/witnesses in general, view them as witnesses and part of the prosecution. For the Crown Attorneys, accountability means ensuring that the victim/witnesses are prepared.

At times the Crown Attorneys will choose the cases to be referred to the Program instead of following the accepted practice of having the Coordinator choose the cases. This presents a conflict as Crown Attorneys may potentially choose cases for winnability as opposed to the needs of the victim/witnesses. It also makes it difficult for Program staff to be responsive to the needs of the clients.

When asked about the reporting relationship, there was confusion on the part of Program staff and Crown Attorneys. Some Program staff were clear that they reported directly to the Provincial Coordinator. Others stated that they reported to the Provincial Coordinator on policy related issues and would seek her directions on such matters while on day to day court related issues they would seek the direction of the local Crown Attorney. Some Coordinators clearly stated that they worked for the Crown Attorney's Office.

Some Crown Attorneys saw the Program as an extension of the Crown Attorney's Office, an integral part of the office and, "The best thing that had ever happened to the Crown Attorney's Office". Another Crown Attorney did not know if he had any authority over the Coordinator but felt the Program should be under the direction of the Crown Attorney since the Program staff were part of the Crown Attorney's staff.

Program staff generally agreed that they were accountable to the victim/witnesses to provide information about the court proceedings and support during the court proceedings, to make appropriate referrals to community agencies and to facilitate meetings between the Crown Attorneys and the victim/witnesses.

According to Program staff, the Program does get modified because of client comments, with alterations usually handled through the training sessions. In particular, two sites (Pembroke and London) have clients fill out questionnaires at the end of the Program. Results of these questionnaires are periodically sent to Head Office where recommendations for changes to the Program are made by way of directives to the site offices.

RESPONSIVENESS AND FLEXIBILITY

The Program organization itself is fairly flat. At the local sites, the site Coordinators take charge of service delivery. Broad policy guidelines give the Coordinator parameters and the Provincial Coordinator's office provides advice and assistance when needed. Careful recruitment of victim/witness coordinators by the Provincial Coordinator has given her great confidence in the ability of the local staff to carry out their duties with minimal operational direction from the centre.

Lack of staffing severely limits the use of a staff person (to varying degrees) to travel outside of the site to visit victim/witnesses who cannot make the trip to the courthouse for information, emotional support or referral needs.

Lack of Crown Attorneys and Program staff correspondingly reduces the ability of the Program to be responsive to the needs of victim/witnesses. Meetings with victim/witnesses and, in some cases, with their families, communication with other stakeholders and attention to detail in meeting victim/witnesses needs are dependant on the time available to the Program staff. If the Program Coordinator had more time to train volunteers, for example, the Program would be able to use more volunteers to accompany many more victim/witnesses to court.

Program staff "bend over backwards" to respond to the needs of victim/witnesses. However, they do not always have control over ensuring that the Crown Attorneys will meet with the victim/witnesses. Program staff make referrals for counselling, but again do not have control over the waiting lists for counselling in the community. The Program attempts to provide special equipment such as screens or closed circuit television to victim/witnesses but this equipment is not widely available.

Some Program staff feel that the information flow to victim/witnesses about referrals and case specifics depends on the interest and sensitivity to victim/witnesses and the faith in the Program of the police officer assigned to the case.

At many Program sites, staff are willing to work as long as it takes to do the job for the clients. They often work late and on weekends when interviews between Crown Attorneys and victim/witnesses are sometimes scheduled. Staff often do presentations to community groups or attend community meetings after work hours in an effort to provide information about the Program to stakeholders, expand the community's knowledge, increase referrals and promote effective linking of services in order to respond to clients' needs.

In one site, responding to high need cases was specified as a high priority. Staff gave the example of teenage girls who were consistently found to be suicidal at some point in the court proceedings. For this reason, these victim/witnesses were considered to be and were treated as high risk cases.

The Program does attempt to meet special needs of victim/witnesses. For example, in child abuse cases the Coordinator after assessing the needs of the case may feel that a special screen for the victim/witness is required at trial time. The Coordinator will arrange for the screen to be available at trial time and will so advise the Crown Attorney. Another victim/witness might require interpretation services which the Coordinator will seek to arrange. It is not always possible to arrange appropriate interpretation services and sometimes the Crown Attorney's interpretation services are used instead. This is not always satisfactory as these interpreters are not always sensitive to the victim/witnesses' needs.

RELIABILITY

This Program scores high on reliability of service.

Program Coordinators are dedicated, trained, knowledgeable and skilled individuals whose backgrounds have provided them with opportunities to develop sensitivity to the needs of victim/witnesses and commitment to service delivery to victim/witnesses.

They score highly with all stakeholders on the consistent and reliable provision of information, emotional support, referrals and linking with the Crown Attorneys and police to make the court experience for victim/witnesses more positive, human and empowering. Crown Attorneys felt the Program was indispensable to their ability to prepare the best prosecution possible. The 1988 victim/witness survey and the two victim/witnesses interviewed felt the Program was very necessary for the victim/witness during the court proceedings. The Program was a constant for them in a very frightening environment.

Confidentiality of case information is critical. Program staff appear for the most part to uphold confidentiality with great care. However, some community stakeholders expressed considerable concern that Program staff did in fact share information received during client interviews with the Crown Attorney responsible for the prosecution. However, Program Coordinators emphasized that they explain to victim/witnesses at the start that information told to them may be passed on to the Crown Attorney.

In light of the new disclosure rules, the Crown Attorney is obliged to pass on any relevant information to the defense, who in turn may pass it on to the accused. Some victim/witnesses are terrified of certain information passing into the hands of the accused, so the victim/witnesses are sometimes hesitant to share information with the Coordinator. This hinders the ability of the Program to provide useful advice and assistance to

victim/witnesses. Close association with the Crown Attorney's office increases this problem with confidentiality which some community stakeholders feel would be minimized if the Program were positioned elsewhere.

RESPECTFULNESS

The Program is premised on making the court proceedings a more humanizing experience for victim/witnesses. There is a firm belief that victim/witnesses have the right to understand and be part of the court proceedings. Attention is paid to the physical needs of the victim/witnesses, most notably the need for a comfortable space for victim/witnesses and/or their families to wait at court, away from the courtroom waiting areas where the accused may also be seated.

The victim/witnesses interviewed in this review and in the 1988 victim/witness survey show overwhelming satisfaction with the degree of caring and respect for victim/witnesses demonstrated by the Program.

Program Coordinators stress the need to sensitize Crown Attorneys, police and sometimes judges to the cultural and linguistic diversity of some victim/witnesses. The Coordinators include this as part of their training and public education duties. Some Coordinators have had their Program introductory letters translated into languages prevalent in their community so that more victim/witnesses will be able to understand the Program and will be more apt to make use of it.

Crown Attorneys and police generally felt that most of the Program staff are well trained and sensitive to victim/witnesses' issues.

TIMELINESS

The Program strives to ensure that victim/witnesses are referred to the Program as soon after charges are laid as possible.

It is commonly accepted that the earlier a client receives service, the better the chances of success. With victim/witnesses of crimes, the earlier information and support are offered, the better the chances for less traumatized victim/witnesses and less likelihood of service needs at a later date. Early intervention and assistance also reduce the potential need for more extensive counselling at a later date. Overall costs to the system could be reduced with consistent early referrals.

Sources of referrals vary from one site to another and are mostly dependant on the Program's relationships with local police, Crown Attorneys, Program staff and

community service linkages. All the Coordinators felt that they had built up credibility with the Crown Attorneys and police to varying degrees. They felt this was one of the keys to getting victims referred to the Program.

Crown Attorneys often choose the cases (victim/witnesses) suitable for the Program. Some Crown Attorneys feel that they are in the best position to make the decision on referrals to the Program. Although some victim/witnesses may be in need of the Program's services, if their case is not strong enough, they may be excluded from referral in favour of victim/witnesses with a stronger case.

Some Coordinators strongly feel that they should choose the victim/witnesses suitable for their Program and they do so. They proactively pursue victim/witnesses by linking with the community and by adapting to local practises, such as placing a staff person in bail court each day to identify victim/witnesses and following this up with a letter and phone call shortly afterwards. Coordinators feel this is an effective method of identifying possible clients at a reasonably early stage in the court proceedings.

Ensuring cases are referred to the Program at the "earliest possible point", however, is in need of refinement and standardization. Depending on the relationships at specific sites, referral could come from the police when charges are laid, at bail court, at the first appearance in court, at the preliminary hearing or at trial. Certainly, intervention at the earliest possible point is the preferred course. Development of a Provincial Program Protocol applied to site specific needs would facilitate the automatic referral of clients at the earliest possible point.

At the local sites visited, generally speaking, there is no backlog or waiting list. There is sometimes a small backlog the day of court with victim/witnesses waiting to see the Coordinator who sometimes cannot spend as much time with each client as she would like, but overall the local sites offer fast service with appointments made the same day or within one week. As well, clients can drop in. However there was concern from a Children's Aid Society that children sometimes had to wait up to three weeks for an appointment with the Program Coordinator.

The Coordinator will arrange a meeting with a victim/witness and a Crown Attorney closer to the court date to ensure that the victim/witness is able to meet with the Crown Attorney and that the case and the victim/witness are fresh in the mind of the Crown Attorney. However, some community stakeholders felt that victim/witnesses need more time with the Crown Attorneys. Some victim/witnesses do not meet with the Crown Attorney beforehand, or if they do meet with a Crown Attorney, it may not be the same one who eventually handles their case.

A2. Criteria for a Client-Focused Organization

COMMITMENT TO PUBLIC SERVICE

The Program staff consistently appear committed to the victim/witnesses they serve. Many hours of overtime are spent in client interviews with those who are not available during office hours. Public speaking and committee work is often arranged in the evenings and on weekends. The Coordinator attends these information sharing forums to promote the Program and improving linkages.

Program staff work hard at developing links with and providing local training to Crown Attorneys, police, and community services to enable the Program to deliver effective and efficient client service, to the extent that their workload permits. Some staff go so far as to organize "brown bag" lunches (at times with guest speakers on victim/witnesses' issues) with the judiciary, Crown Attorneys, police, Bar and community to facilitate understanding and good will.

ATTENTION TO STAFF SUPPORT

The Head Office of the Program is in constant contact with the local offices in order to provide support and give advice and encouragement. The total Program appears committed to providing quality service to its clients and paying attention to the needs of its staff.

The Head Office assumes responsibility for selecting Program Coordinators at the local sites. It particularly makes an efforts to choose the most appropriate staff for the sites and prides itself on the selections to date. Crown Attorneys and police comments support the success in the selection of appropriate staff to run the Program. Criteria for selection include knowledge of the court proceedings, knowledge of victim/witnesses and victim/witnesses' issues and related past experience.

The Head Office provides a conference forum for Program Coordinators twice a year. This serves the dual purpose of allowing the Coordinators to share new information and fostering a "togetherness" feeling in a job which promotes isolation.

Training sessions are also provided to Crown Attorneys twice a year by the Program in order to share new information on specific victimizations such as domestic assault, sexual assault and child abuse as well as to provide caselaw in specific areas. Throughout the year, information packages on new caselaw and policy changes are sent to Crown Attorneys and Coordinators.

For the first time since the onset of the Program, a training session was provided by Head Office for Support Workers this year. Although well received, there are no plans to make this an annual event due to lack of funding.

The Program does not have a policy and procedures manual for Coordinators. Policy and procedures updates, however, are conveyed through directives to the local sites.

Staff in site locations recently received computers. Some would now like training to use these computers effectively. It is understood that a computer training schedule for the sites has commenced. Staff would also like access to other information systems such as the Courts Administration ICON system to which the Crown Attorneys have access and possibly linkages with police information systems to speed up the information flow.

Space within courthouses was assigned to the Program based on the "good will" of either the Criminal Law or the Courts Administration Divisions of the Ministry. Most of the staff indicated that they were simply assigned space, some of which was converted from storage closets.

Many Program sites lack a waiting room, for example, and victim/witnesses, in particular, children, may have to sit in the Coordinator's office for hours waiting to be called into court. This disrupts the Coordinator's work, the ability to maintain confidentiality during telephone calls or interviews with other victim/witnesses and puts more strain on the victim/witnesses themselves. On the other hand, being located within the Crown Attorney's office space provides security which staff and victim/witnesses feel is quite important.

Lack of sufficient space was also found to be a barrier to the volunteer component of the Program. With insufficient space, finding places for the volunteers to work becomes a very real inhibitor.

Program Coordinators consistently expressed concern about the lack of space and arranging the space to accommodate clients in order to ensure their privacy from the accused, other victim/witnesses and the public and their well-being. In general, staff felt that inappropriate space was a barrier to performing services in a sensitive manner striving to ensure the clients' well-being.

The caseloads of Coordinators are high, running at an average of 300 ongoing cases per month. Lack of staff and lack of resources effectively inhibits changes to this situation at this time. Staff prioritize cases based on needs, and volunteers where possible offset some of the workload so that staff can deal with the more needy cases. Staff do seem to assess victim/witnesses' needs in a timely manner and then use referrals to community agencies as early as possible to provide service to clients.

AMONG STAFF

The mutual support between the Program's Head Office and site staff is remarkable. The local site Coordinators are also supportive of each other and look forward to the conferences, held twice a year, to share experiences and relieve stress. These meetings are the Program's main venue for morale building and a great forum for sharing ideas.

The Head Office is diligent in its efforts to share information and policies pertinent to victim/witnesses informally and by memos and directives. It is also quick to request input from Coordinators on developing policies regarding victim/witnesses.

B: Criteria to Establish Well-Being

EMPOWERMENT

The criminal justice system protects the rights of the accused and leaves the treatment of victim/witnesses in the hands of Crown Attorneys, police and judges who operate under a legal mandate that does not formally acknowledge victim/witnesses. The Victim/Witness Assistance Program is designed to provide a comprehensive service to victim/ witnesses of crime to enhance their understanding of and participation in the system. It is the first step towards formally acknowledging the role of victim/witnesses in the criminal justice system.

The Program is endorsed by all stakeholders, to varying degrees, as providing a needed service to victim/witnesses. It is, by mandate, a Program that empowers victim/witnesses. It makes them aware of the criminal justice system, their rights, their choices and the consequences of their choices. It helps prepare them to be more effective witnesses and increases the prospect of winning their case. Successful prosecution vindicates their victimization. An acquittal with a thorough debriefing helps them put the case in perspective and walk away able to cope and with the feeling that they did the right thing. The Program gives them a support person during the court proceedings, someone who is looking out for them. They are not just a number but rather an important person with rights and choices during the court proceedings.

Some Program Coordinators believe that the Program has the potential to assist in "breaking the cycle" for victim/witnesses as staff give clients the tools (information, emotional support and needed community referrals) so they can become self sufficient and able to make decisions about their future.

Moreover, in some sites a large number of the volunteers are past clients. They are familiar with the needs of these clients and are in a position to provide advice based on

a greater awareness of the issues facing victim/witnesses. Victim/witnesses who see volunteers who have made it through feel more confident that they can do it too.

As the Program becomes more aggressive in seeking out victim/witnesses at an early point, some sites have staff attend bail court to find out who the possible victim/witnesses are. Staff advise the victim/witnesses of the conditions of bail and sometimes get them a copy of the bail order. In addition, they are able to obtain the names and addresses of victim/witnesses and send them an introductory letter about the services offered by the Program. This is empowering on two counts. The letter advises victim/witnesses what happened at bail court, whereas the victim/witnesses are often reliant on the accused to explain what happened. Secondly, the letter advises victim/witnesses at a relatively early point about the Program's services and offers them the choice of seeking assistance.

At many sites staff advise or help victim/witnesses to fill out Victim Impact Statements which may be used by the court at the time of sentencing. These statements are seen as beneficial for sentencing but are also of therapeutic value for victim/witnesses during the healing process. Victim/witnesses benefit from the added empowerment of explaining the impact of the crime in their own words.

At some sites staff assist victim/witnesses with contacting and filling out application forms for the Criminal Injuries Compensation Board. Since accessibility to this Board is a major problem, the Program is able to help victim/witnesses overcome this barrier by advising them about the existence of the Board and the inherent expected delays, and by giving them tips on how to keep records and keep in touch with the Board. Facilitating this process is a contribution to the empowerment of victim/witnesses.

REFERRAL

The Program informs victim/witnesses up front what they can do for them. One of the major responsibilities of the Program is making referrals out to community agencies. To facilitate this process, the Program endeavours to establish firm links with the community to ensure smooth referrals for victim/witnesses.

Program staff do a "needs assessment" of victim/witnesses at the first interview if possible. Based on the needs, they advise victim/witnesses of the services available in the community to meet their needs. They also assist in making the referrals as easy as possible for victim/witnesses.

C. Criteria Which Ensure Rights

FOSTERING

The very presence of the Program acknowledges victim/witnesses as participants in the criminal justice system who have the right to have their needs met.

The Program offers victim/witnesses information, support and referrals facilitated by the Coordinator's knowledge and association with the community. As well, the Program has the ability to ensure victim/witnesses are prepared for the court proceedings and equipped to give evidence in a confident manner, knowing that they are important and have a right to be there. Debriefing at the end of the case is also crucial to victim/witnesses' sense of their rights. If there is an acquittal, Program staff are quick to emphasize that it is not necessarily because the court felt the accused was lying or the assault was not worthy of a conviction, but rather due to insufficient evidence and the concept of guilty beyond a reasonable doubt. Taking a case to trial further reinforces the idea that the victim/witness has the right to be free from abuse. Despite an acquittal, the trial has once again shown the offender that society views abuse as a crime.

EQUITY

The Program currently provides service in 13 of the 54 court jurisdictions across the province. The demand for the Program in other sites is reportedly great, but lack of funding prevents any expansion at the present time.

The main Program funding comes from the Ontario Women's Directorate. As a result and given the high degree of vulnerability, services are focused on victim/witnesses of domestic assault, sexual assault and child abuse within the current 13 sites. In general, there is no time for staff to deal with other victim/witnesses of other crimes such as charges of theft or criminal negligence causing death. However, Coordinators are quick to say that no victim/witness is turned away but rather referred to someone else or provided with sufficient information over the telephone. So, although some degree of advice is offered to other victim/witnesses, if time permits, equitable service is not realized in the present sites.

There is a need to expand to other victim/witnesses such as the victim/witnesses of drunk drivers, especially the ones who are "devastated". The Program is not reaching victim/witnesses of theft and drunk driving in a comprehensive way. Many Coordinators felt they should be spending more time on domestic assault cases as well. On the other hand, some Coordinators felt that the Program ought to stick with its three priority groups

of victim/witnesses and concentrate on enhancing those services since those groups make up the majority of victim/witnesses of crime anyway.

The disabled, those from minority groups and different cultural backgrounds, Aboriginals and victim/witnesses of non-priority offenses in general do not receive adequate service. The Program is not reaching out to certain minority groups who are hesitant to use it. There is a need for enhanced sensitivity and cultural training of Crown Attorneys, police and Program staff to improve attempts to get victim/witnesses into the Program. As well, it is hard to educate the minority groups about the Program if translators and translations of the Program's materials are not available. There have been some attempts to translate the Program's pamphlet and letters into various languages to improve knowledge about the Program. Access to the Program is often a systemic problem. Some minority groups fear the police and the criminal justice system so they hesitate to involve them. There is pressure from within their communities to keep the problems within the family.

Both internal and external stakeholders felt that some groups within the physical, sexual and child abuse groups were excluded from the Program due to language barriers and cultural barriers.

Lack of interpretation services for victim/witnesses is another major barrier to effective service delivery. Victim/witnesses in some places must use court interpreters who may be male and not sensitized to issues the Program staff regularly deal with. The present interpretation services available do not address the needs of minority groups appropriately.

Individuals with disabilities are another group which experiences barriers to service delivery. It is estimated that three out of five disabled persons are abused but they are not getting into the Program because charges are not being laid, disclosure is not being made and linkages with relevant agencies are limited. One site reported that a Surrey Place representative recently met with the Coordinator to obtain information on how to meet the needs of disabled victim/witnesses testifying in court and help them overcome these barriers.

Some Coordinators observed that most of the Victim/Witness staff are white middle class females. They felt this might inhibit victim/witnesses of colour and diverse cultural backgrounds from making use of the Program. Aboriginals were specifically cited as a distinct culture who prefer talking to other Aboriginal women whom they perceive to understand their situation better.

The level of service delivery varies from strict adherence to the guidelines of service delivery to victim/witnesses of domestic assault, sexual assault and child abuse within one court location to service delivery to every victim/witness of any crime who comes to the

attention of the Program Coordinator responsible for the provision of court support and accompaniment to court locations outside of the home court location. Level of service delivery is usually dependant on staff time.

EVOLVING

Ontario is now entertaining discussions on a Private Member's Bill for an Ontario Victim's Bill of Rights which asks that victims be given access to health and social services, medical treatment, counselling and legal services that are responsive to their needs. The major concern raised by such a Bill is its lack of enforceability. The Bill raises the expectations of victim/witnesses but in reality there is no mandatory obligation to adhere to the components of the Bill.

Part of the information sharing focus of the training sessions offered by the Provincial Coordinator to Crown Attorneys and the periodic packages of information sent to Crown Attorneys on victim/witnesses' issues and policies is the sharing of all caselaw pertaining to cases dealing with domestic assault, sexual assault and child abuse. Crown Attorneys make use of this material in their preparation for their prosecutions and find it extremely beneficial.

The Provincial Coordinator also appears to be diligent in her efforts to keep Program staff and Crown Attorneys informed about new policies and legislative amendments geared to giving victim/witnesses acknowledgement and rights within the criminal justice system. Any new policies and procedures are sent to the sites in hard copy and become topics for discussions at the training sessions held twice a year.

PROTECTION

The presence of the Program to support victim/witnesses through the court proceedings adds credibility to the notion that abuse, in this instance, family abuse, is a crime which will not be tolerated. Abusive family members are getting the message slowly but consistently that they will be charged if they physically or sexually abuse their spouses or children.

Support from the Program and appropriate referrals to community agencies are building a continuum of services for victim/witnesses and giving them some confidence about refusing to take abuse. This serves to protect individuals from families who until recently have taken advantage of the "family" situation to continue their abusive ways. The police as well are changing their attitudes, responding to calls and treating domestic assaults, sexual assaults and child abuse as a crime.

D. Criteria Which Focus on the Community

At the local sites, the Program Coordinators strive to develop appropriate linkages with community agencies and involve the agencies in the services provided to victim/witnesses. Local directories of services are maintained and after an assessment of a victim/witness' needs, the victim/witness is referred to the appropriate service.

At the Head Office, the Provincial Coordinator and counsel are involved in community committees and public speaking engagements. Ideas are shared and used when appropriate.

Program Coordinators at the local sites are active in community committees and share information and ideas with community members on a regular basis.

To be effective, the Program must understand their community and the services provided by the community. They must be a part of the community activities and be a "known" and respected commodity within the community. Their total commitment to helping victim/witnesses through the criminal justice system is certainly respected among community stakeholders, but indications are that there needs to be more attention paid to avoiding "overlap" of service delivery vis a vis community stakeholders. The community would also like to see the Program dissociate itself more from the "prosecutorial" side of the case. They see this as a hindrance to delivering services to victim/witnesses.

E. Criteria Which Position Programs On a Continuum of Supports

DISTINCTIVENESS

This Program is the first government attempt at providing service to victim/witnesses where criminal charges are involved. Until 1986 the main focus was on the accused. Various police forces across the province have since developed victim service programs to provide crisis intervention at the time of the offence. The funding basis for these programs appears to be unstable at times and coordination with the Program's local sites is not standardized. Currently, the Program's limitation to providing post-charge services would seem to inhibit direct referrals at the occurrence stage of victimization. However, some local sites do maintain communication with the victim services provided by the police.

Community agencies have provided supports and counselling to victim/witnesses in the community setting for many years but this Program is the first organized attempt to see victim/witnesses through the court proceedings from a position within the courthouse. The Program is accepted by virtually every stakeholder within the criminal justice system

and to varying degrees within the community. Almost everyone interviewed wanted to see the Program stay and expand.

Some community stakeholders believe that there is an overlap with other victim/witness' services. For example, they feel that women's shelter workers are more in tune with the needs of abused women and are quite capable of preparing them for court, liaising with Crown Attorneys and police, and ensuring appropriate counselling and other needs are met before, during and after the court proceedings.

On the other hand, the Special Committee on Child Abuse - Child Witness Program which does court preparation for child witnesses and is involved with the child throughout the process, believes that the Ministry Program provides a valuable service to the child without necessarily overlapping with its services.

Some external stakeholders agree that there should be a continuum of supports for victim/witnesses and feel that the Program has a place in the continuum. They feel the Program demystifies the court proceedings and provides a balance to the adversarial, pro accused court system. The Program tries to break down the barriers for victim/witnesses. One of the benefits is confident victim/witnesses who are able to participate in the trial in a positive, empowered manner which ensures a better prosecution.

LEADERSHIP, COORDINATION, AND LINKAGES

Most external stakeholders felt that there is a need for continuity and support before, during and after the court proceedings. This is in direct contrast to the current policy of the Program which is limited to post charge situations and restricted to the time frame of the actual court case. Some Program Coordinators believe that the ideal and most important aspect of service delivery would be to offer a "continuity of services". Victim/witnesses would have court preparation, court accompaniment and support as well as follow up afterwards. Women would feel they are being heard and would be empowered to make changes in their lives.

Some external stakeholders emphasize the need for a "coordinated approach to victim/witnesses" with one stakeholder assuming the "coordinating lead" and acting as the "continuous contact" for victim/witnesses. Some feel that the Program should assume the lead while others feel that it does not matter but that people must ensure continuity of service.

The Program is somewhat hampered in taking a leadership role in the coordination of the continuum of supports offered to victim/witnesses since it is restricted to post-charge

victim/witnesses of crime. However, its position in the Ministry of the Attorney General does provide a key vantage point for leadership.

TRAINING AND PUBLIC EDUCATION

The Program's Head Office does take a leadership role in the organization and provision of training to Crown Attorneys and Program staff. It also provides training to the Police Colleges in Aylmer and Scarborough. Some external stakeholders feel that there should be a process for interdisciplinary training to increase the understanding of all stakeholders since, in fact, they are a "wide range of partners".

The Program provides two training sessions per year to Crown Attorneys from across the Province. The Program Coordinators also provide training at the local level to Crown Attorneys and Police as workload permits.

In times of constraint, training and education are among the first components which are reduced. For example, in one region the Regional Director of Crown Attorneys noted that they used to have two conferences of Crown Attorneys a year at which time the Victim/Witness Assistance Program services would be one of the topics on the agenda. Now they are reduced to one conference a year and are forced to cram new legislation, legal changes and services into three days. As a result information sharing and training is reduced.

Interestingly, most of the Crown Attorneys interviewed appeared to have only a very general idea of the function of the Program. However, they all felt that it provided a service to them through preparation of their witnesses.

Many Program staff felt that training about the Program is not reaching enough police due to the systemic problem of shift work of police constables who are often the first on the scene of a victimization situation. Program staff, in one site, noted that good service was received on a consistent basis from police detectives who had, for the most part, received training, complete with a training video. Problems occurred with police constables who had not received training.

Program staff noted that without police and Crown Attorney training, especially sensitivity training, "attitudinal" problems will continue and these can negatively affect referrals to the Program and case information flow to Coordinators. This hinders the service delivery.

Some external community stakeholders, as well as some Program staff, stated that sensitivity training in the areas of sexual assault, domestic assault and child abuse was needed for Crown Attorneys, judges, police, and Coordinators. It was also felt that there

was a need for a quality assurance program for all staff in the system to ensure consistency and quality service to clients throughout the province.

Public speaking engagements, and committee work also serve to provide educational opportunities for community agencies and the public about victim/witnesses and the Program.

Most Program Coordinators feel that they must continue to educate the public about what the Program does. Their ability to go into the community and advocate for the Program through speaking engagements to groups is thwarted by time consuming caseload demands.

The Program's Head Office holds two meetings per year in Toronto for all the Program coordinators. These meetings are viewed as an opportunity to share information among Coordinators and with internal and external stakeholders. They also offer an opportunity for informal exchanges about problems and ideas among the Coordinators who often feel isolated in their jobs. Coordinators count on these meetings to release some of the stress and would like even more opportunities to meet.

Many Coordinators themselves expressed a desire to be able to attend more specific training sessions in areas such as sexual assault, domestic violence and child abuse but pointed out that lack of funds and lack of staff realistically prevent enhancement of this part of the job.

PARTNERSHIP AND DELIVERY OF CLIENT SERVICES

The concept of partnerships to provide a continuum of service to victim/witnesses of crime should be present among all internal and external stakeholders. With community stakeholders, part of the protocol should ensure that duplication of services does not occur since this diminishes services to other victim/witnesses. If victim/witness services are already available in a community, the Program should divest itself of these cases and devote their time to other victim/witnesses whose needs cannot be met in the community.

Partnerships would ensure the flow of essential case information at the earliest possible point and provide a forum for continuous sensitizing and sharing of information about victim/witnesses.

F. Criteria for Cost-Constraint and Administrative Simplicity

The Program currently provides services to approximately 6,500 cases per year with a total staff complement of 35. Support to victim/witnesses and the prosecution appears to be good value for the \$1.8 million spent on the Program, especially when the benefits of more empowered victim/witnesses and better prepared prosecution culminate in a more equitable criminal justice system. Program staff and Crown Attorneys generally feel that the Program is operating in a cost efficient manner.

Possibly the time spent by Program Coordinators doing outreach work could be reduced if a protocol were put in place and victim/witnesses referred to the Program at the earliest possible point.

It can also be argued that the sooner victim/witnesses are made to feel part of the court proceedings, understand the court proceedings and receive information and support, and the sooner they are given appropriate referrals to meet their needs, the less likelihood victim/witnesses will experience prolonged trauma and need long term counselling and care. This in turn reduces the future financial burden on the community.

G. Broader Corporate Criteria

There is a strong perception by Program Staff that the senior management of the Criminal Law Division and the Ministry are not committed to the Victim/Witness Assistance Program. Until this commitment is established, the prevailing feeling is that the Program will not achieve its potential.

The Program reporting structure seems clouded. Although the Divisional Organization Chart shows the Provincial Coordinator reporting to the Assistant Deputy Attorney General of Criminal Law Division, the Provincial Coordinator does not have standing at the senior management committee level of the Division and thus has no direct means of achieving presence, status and gains for the Program. As a result, staff at all levels feel that the Program is not receiving the priority and status that it should have.

Relationships between the Program and the Crown Attorneys at the local level are somewhat clouded as well. Some Crown Attorneys believe that the Coordinators report to them as well as to the Provincial Coordinator.

RECOMMENDATIONS

SERVICE DELIVERY

1. With the support and funding from the Ministry of the Attorney General, expand the Victim/Witness Assistance Program to court jurisdictions across the province in a planned, strategic manner with attention to local needs.

Outcomes:

- provides a standardized access to a minimal level of service delivery across the province
- demonstrates government commitment to victim/witnesses

Analysis:

Findings show that the Program is supported by most internal and external stakeholders. In addition, previous Program reviews support the notion that this Program is a much needed service which contributes to positive results in the court proceedings, humanizes the adversarial system for victim/witnesses and reduces further traumatization of victim/witnesses.

Currently, the Program does not provide service to all victim/witnesses of crime across the province. The Program is limited to 13 sites plus the special prosecution sites.

2. With the support and funding of the Ministry of the Attorney General, expand the number of staff at the existing sites to provide more complete service to victim/witnesses of crime.

Outcomes:

- standardizes and complete service to victim/witnesses at existing sites
- offers greater capacity to do more frequent and more in-depth training
- creates greater capacity to do public education
- links more closely with the community.

Analysis:

The existing sites could provide more complete service to the victim/witnesses presently being served if the number of staff at each site were increased. The Program could provide the court accompaniment service to more victim/witnesses. With more staff, volunteer programs could also be expanded and enhanced at existing sites to allow more complete service to victim/witnesses, especially if there were a staff person designated as the volunteer coordinator.

3. With the support and funding of the Ministry of the Attorney General, expand Program service to all victim/witnesses of crime who come in contact with the criminal justice system.

Outcomes:

- provides equity of access to all victim/witnesses of crime
- standardizes service delivery at all sites

Analysis:

The current Program concentrates its services on the priority groups of victim/witnesses of domestic assault, sexual assault and child abuse. Although the Program will not turn away any victim/witness, the degree of service to other victim/witness groups is often limited to telephone advice and/or information and referrals to other services.

4. Increase the number of Head office staff to assume some of the corporate duties.

Outcomes:

- provides the Provincial Coordinator more time to concentrate on supervision of site Coordinators

Analysis:

As the Program expands, the Provincial Coordinator will require more time to monitor and supervise the increasing number of site Coordinators. Two additional staff will allow her the flexibility to reorganize central Program duties and functions.

5. Establish a policy to ensure that referrals to the Victim/Witness Assistance Program are made at the earliest possible point in the criminal justice process.

Outcomes:

- enshrines the concept of earliest possible intervention for victim/witnesses
- reduces the likelihood of prolonged traumatization for victim/witnesses
- makes victim/witnesses a part of the process at the earliest possible point, giving an anchor and the feeling that they are an important part of the process

Analysis:

Too often the process for referrals of victim/witnesses to the Program is dependant on local relationships with Crown Attorneys, police, community agencies and Program staff. A provincial referral policy would serve to standardize and automate referrals to the Program.

6. Encourage the Program to provide outreach service to clients in outlying areas.

Outcomes:

- recognizes the need to serve victim/witnesses in outlying areas (rural and satellite courts)
- expands accessibility of service to victim/witnesses in outlying areas
- fills a large void in some areas where community services are scarce or absent

Analysis:

Many of the current sites confine their service delivery to the court location. If they were to do outreach work, they would increase the number of victim/witnesses served by the Program. This would require a refocusing and stretching of services in order to reach more victim/witnesses.

7. With Aboriginal and multicultural clients, continue to work with specialist agencies to improve service delivery.

Outcomes:

- serves to reduce the distrust of Aboriginals and clients from diverse cultural backgrounds

8. Develop a Provincial Victim/Witness Protocol within a reasonable time.

Outcomes:

- acknowledges the Program as equal and valuable and defines the Program's role and relationship in the criminal justice process
- reduces the role strain on Coordinators
- standardizes the level of service and the information flow
- provides a blueprint for continuity of service to victim/witnesses which can be translated into customized site protocols

Analysis:

Development of this Protocol would require the involvement of the Provincial Coordinator, Crown Attorneys, police, CAS, community agencies and schools. This would encourage the development of a "continuity of service" ideal for clients and reduce the risks of duplication, confusion and lack of awareness of services, inadequate service and revictimization of victim/witnesses.

9. Liaise with other agencies who provide court preparation and assistance to victim/witnesses and share best practices.

Outcomes:

- encourages standardization and improved services to clients

STRUCTURAL

10. Clarify the reporting relationship of the Victim/Witness Coordinators.

Outcomes:

- reduces role strain
- puts the Program on an equal footing with the Crown Attorneys

Analysis:

Some Program Coordinators view their position as having a "dual reporting" obligation to the Provincial Coordinator of the Program and to the local Crown Attorney.

Some Crown Attorneys view the Program as their Program and expect the Program Coordinators to report to them and share all information. Currently the Crown Attorneys have a good rapport with the Provincial Coordinator but should the Provincial Coordinator change, the Crown Attorneys acknowledge that they may have some problems and disputes over the reporting relationships.

11. Clarify the role and duties of the Support Workers.

Outcomes:

- ensures that the qualifications of applicants meet the requirements of the position

Analysis:

The Support Workers are often expected to monitor parts of the caseload and in particular the domestic assault cases. It is important that the Support Workers be qualified to perform these extra duties.

12. Develop a provincial policy and procedure manual for the Program.

Outcomes:

- standardizes the Program's policies and procedures across the province

- reflects the equal and valued position of the Program in the Ministry
- improves the clarity of expectations for all staff members of the Program
- clarifies Program duties in an expedient way for new staff

13. Develop a Provincial policy and procedure manual for the Volunteer Program.

Outcomes:

- standardizes the Volunteer Program across the province
- clarifies volunteers' expectations and duties in an expedient way for new volunteers

14. Develop a policy on the position of the Program in relation to the rules of disclosure.

Outcomes:

- standardizes the rules of disclosure between the Coordinators and the Crown Attorneys province wide
- removes confusion of what must be divulged to the Crown Attorneys
- increases level of trust between the Coordinators and victim/witnesses
- reduces the revictimization of victim/witnesses

Analysis:

Victim/witnesses look to the Program to meet their needs in the areas of information, emotional support and referrals. In order to accommodate these needs, the Coordinator must obtain personal information from victim/witnesses. Confidentiality is crucial for the victim/witnesses' safety and well-being. Due to the unclear reporting relationships, obligations and loyalties are split with some Coordinators choosing to observe client confidentiality and others choosing to divulge all victim/witness information to the Crown Attorneys.

The Supreme Court decision in Stinchcomb requires Crown Attorneys to disclose anything potentially relevant to the defence. This would include any information Program Coordinators disclose to the Crown Attorneys about what

victim/witnesses have told the Coordinators. The Program must have specific guidelines to deal with this. Clear and detailed policy guidelines would assist the Coordinators in establishing trust with victim/witnesses.

15. Legitimize the right of access for the Victim/Witness Assistance Program to case file information.

Outcomes:

- ensures standardized and expedient referrals and service to victim/witnesses
- involves victim/witnesses at a consistent and early stage of the process
- allows Coordinators the exclusive right to choose cases

Analysis:

This will ensure standardized and expedient referrals and service to victim/witnesses and may be accomplished through a policy statement, an information sharing agreement or standing orders of the Crown Attorneys and the police departments.

Program staff need direct access to case information from the Police and Crown Attorneys in order to provide information, make informed assessments and referrals to community agencies. Technological improvements would facilitate access to information on cases. For example, a direct hook up to the ICON police and Crown Attorney case management systems would free Program staff from the need to depend on the good will of these sources.

COURT/LEGAL SYSTEM

16. Formalize the standing of victim/witnesses in the criminal justice process.

Outcomes:

- acknowledges victim/witnesses in the criminal justice process

Analysis:

In most instances, victim/witnesses do not have a lawyer to represent their interests in the criminal justice system. Therefore, the only vehicle for formal

acknowledgement of victim/witnesses presently is when they are determined to be witnesses in a court case. Some external stakeholders feel that the criminal justice system with an emphasis on the rights of the accused, adversarial nature, and proclivity for remands and delays is instrumental in revictimizing victim/witnesses. Formalized standing for victim/witnesses may provide a forum for further discussions on these and other process related concerns. Some Crown Attorneys take issue with the name of the Program and argue that there is a presumption of guilt. By calling the clients "victim/witnesses", some legal staff feel there is a presumption that the accused is guilty before the accused has been convicted and this is counter to the principles underlying our criminal justice system. This was not a major concern of interviewees but may be a legal technicality which should be considered.

HUMAN AND PHYSICAL RESOURCES

17. Develop a Ministry policy on the requirements and the right of access to appropriate and sufficient facilities for the Victim/Witness Assistance Program within the courthouses across the province.

Outcomes:

- ensures privacy for all victim/witnesses and increase their sense of well being
- allows the Program staff to provide service in a sensitive manner
- allows the Program to have room for enough staff to provide adequate service
- recognizes the standing and value of the Program in the criminal justice system

Analysis:

This policy would become a "blueprint" for the Program for future sites.

18. The Provincial Coordinator, with the support and assistance of the Criminal Law Division, should develop a plan to deal with the high stress inherent in the position of Victim/Witness Coordinator.

Outcomes:

- acknowledges stress in this position
- reduces staff burnout
- results in more effective service to victim/witnesses
- expands the Program's potential for excellence

Analysis:

In consultation with the Human Resources Branch of the Ministry, Head Office Program staff and senior managers of the Criminal Law Division should develop a plan to address this issue and coordinate it with the employee's performance appraisal.

TRAINING:

19. With Ministry support and funding, provide more frequent and extensive training to Program staff, Crown Attorneys and police.

Outcomes:

- serves to change "attitudes" in an optimal number of Crown Attorneys and police
- provides an opportunity to offer more frequent and varied training to Program staff
- allows the Program to focus on subject specific training sessions, such as cultural sensitivity, Aboriginal and race relations training

20. Provide more training about diverse cultural communities by reaching out to multicultural communities to provide training to Program staff, Crown Attorneys and police.

Outcomes:

- improves sensitivities to victim/witnesses in the court system

- shows the system's willingness to do outreach to ensure appropriate, comprehensive training
21. Develop age-specific information books, games etc. to be used when briefing victim/witnesses.

Outcome:

- increases the knowledge and contact level of victim/witnesses, especially children.

Analysis:

The Program's development of the children's colouring book and My Court Case kit have been widely accepted and praised for their usefulness. This concept should be applied to the development of other age specific tools.

PUBLIC EDUCATION:

22. With the commitment of Ministry funding to the Program on a provincial level, commit to the preparation of pamphlets for specific groups of Program users, in particular a pamphlet for teenagers and adult victim/witnesses and the parents and families of victim/witnesses.

Outcomes:

- standardizes the Program's functions by group
 - provides clarity and increase awareness of the parameters and services of the Program
23. Commit to the preparation of Program pamphlets in more languages.

Outcomes:

- would increase knowledge and potential access to the Program

LINKAGES

24. Institute yearly consultations with community agencies.

Outcomes:

- would solidify links with the community and acknowledge the need to work in partnerships to provide effective service

D. CRIMINAL INJURIES COMPENSATION BOARD

FINDINGS

A. Client-Focused Service Criteria

A1. Traditional Client Satisfaction Indicators

Due to the timing and mandate of this review of the Criminal Injuries Compensation Board, the review did not involve the canvassing of views from a representative sample of past and current applicants. For the most part, information was gathered from persons internal to the Board, and persons in the community who assist applicants or represent a number of applicants at the Board. However, a number of comments were received during the course of victims' focus groups, and a number of issues which will be addressed below were raised in other areas including the Standing Committee on the Administration of Justice (1993), and the victim survey which was completed by the Board in 1990.

NEEDS MET

According to all informants, the most important needs of the victim include the need for recognition, the need for counselling or therapy, and the need for financial compensation.

Overwhelmingly, the information from both internal and external informants is that the Board provides crucial recognition for victims of violent crimes. The oral hearing is seen as a way for the victim to tell his or her story and to have the story validated. In 1990, in a survey of 115 victims, 34 out of 57 who responded felt that the hearings should be oral hearings. Twenty felt that they should be documentary, and nine did not express a preference.

The act of awarding an amount for pain and suffering was seen as an important part of this process. In the 1990 survey, 45 out of 57 responses from victims indicated that the

victims were satisfied with the amount of their award. (In the survey summary it was noted that they may have been influenced by the fact that they recently received their awards from the Board.)

Although approximately 80% of the total compensation awarded relates to pain and suffering awards, there are no available statistics on how the money for pain and suffering is being spent by the applicants and whether it is being used to significantly improve the victims' circumstances.

External informants raised concerns regarding the issue of pain and suffering being denied to applicants whose family member has been murdered. In those cases, the Board has refused to award compensation for pain and suffering to the family members since they did not prove that the suffering was beyond what would normally be experienced with the loss of a loved one.

As victims of crimes, it can be assumed that most applicants might require counselling or therapy. Unless these services can be obtained and funded through OHIP or through other programs including self-help groups or community programs, this can be a costly endeavour for a victim. The Board can make interim and final awards for counselling and therapy. Many contacts have suggested that the timing of such services can be critical. Information suggests that the earlier the therapy is received in relation to the crime, the more positive the effect. If awards are not made until the end of these cases, this can mean that the money for counselling is not available to the victim until two to three years (at a minimum) after the crime.

Under s.14 of the Act, the Board has discretion to make awards for interim counselling but these awards were rare in the past. Recently, the Board has developed guidelines to consider interim funding for counselling since the Board recognizes that immediate treatment is beneficial for the victim and may reduce the ultimate award for pain and suffering.

The issue of funeral expenses was also raised by external contacts in that the Board has determined a limit for this type of compensation which is not felt to be adequate to cover the minimum costs associated with funerals.

Although the Board may be meeting needs of these victims by providing the hearing and the compensation, the length of the process diminishes this result. Issues relating to accessibility, timeliness and responsiveness of the Board will be dealt with under those headings, and given a number of concerns in those areas, a more effective way of meeting client needs must be considered. Also, consideration must be given to all of the potential applicants whose needs are not being met or even addressed by this Board.

ACCESSIBILITY

From the information gathered from all contacts, this program rates extremely low on accessibility. As indicated above, it is estimated that less than 4% of eligible victims apply to the Board. Although it cannot be determined how many would choose not to apply to the Board even if they were aware of their right to apply, it is clear that this Board is not accessible to all victims of violent crime.

Several external contacts have voiced concerns regarding the reluctance of the Board to make blank application forms available to agencies and to victims themselves. Many have indicated that they must resort to photocopying blank application forms in order to assist their clients. Several external informants have indicated that their clients were told over the phone that they would not be entitled to compensation, and as a result, no application form was provided. This has resulted in the client having to make trips in to the Board in Toronto simply to get the form.

The Board indicates that it will mail out applications to appropriate callers. However, the Board confirms that the application forms are carefully guarded to ensure that only eligible applicants get access to these applications. As a result, it appears as if a screening process is conducted by the Board prior to releasing an application form for completion. This process of informally screening applicants was of concern to many external informants.

Of the applications made to the Board, 94% of the applicants are ultimately successful in securing compensation awards. (It is not known how many are unsuccessful in obtaining an application form from the Board.)

The current applicants find out about the Board by word-of-mouth, police, Victim/Witness Programs, Women's shelters, lawyers, and other community representatives. The Board does little to publicize its existence. Apart from a few public appearances by the Chair and various Board members, brief references to the Board in pamphlets such as those provided for the Victim/Witness program, posters in hospitals or cards provided by the police, there is no formal program to inform the public of the Board.

Since there is no formal mechanism for ensuring that victims know about the Board, it is often left to chance, and this ad hoc approach to access has been criticized recently in the hearings before the Standing Committee on the Administration of Justice reviewing victims' issues. This has been identified as a major dilemma by the Board itself, because an increase in public awareness will increase the backlog of applications and exacerbate the current inability to fund the awards.

The Board office is located in Toronto, but hearings will be held in other areas as required. Whether regional accessibility is a problem is not clear. At this point it appears that the mere presence of the Board in certain areas may increase the awareness of the Board in that area. Knowledge of the Board and requests for hearings may be non-existent in other areas simply because of the lack of a local presence. Although external informants have commented that it would be helpful to have staff in local areas to assist victims with the completion of the application, the physical presence of the Board in each community (other than the Board members attending for oral hearings) is not likely important since the only necessary attendance at the Board by an applicant should be the oral hearing, if one is held. It should be possible to maintain all necessary contact by telephone or mail.

The Board is currently reviewing the application forms and form letters with a view to making the process more efficient. In the past, letters would be sent to the client advising them not to contact the Board for at least six months after applying. This practice was raised by many contacts as a concern since it gives a clear message that the Board is not accessible to clients during that time period. This practice has been stopped. Other form letters and procedures for collecting reports are also being reviewed. The analysts must gather reports from various areas and this process is complicated by the fact that requirements for payment for copies of the reports or clinical records differ from practitioner to practitioner, and facility to facility.

CLIENT ACCOUNTABILITY

A survey was conducted in 1990 and the questionnaire was mailed to 115 victims. 57 (49%) responded.

Otherwise, there appears to be no formalized method for clients to offer constructive suggestions to the Board. On the contrary, it was suggested by external contacts that clients may be reluctant to formally complain in fear that their application may be jeopardized.

Until very recently (June, 1993), an Annual Report has not been made available to clients or the public since 1989 because of a lack of funds. The annual report includes a summary of cases and amounts awarded to various victims. Therefore, there has been a four year delay in the reporting of Board decisions and statistics, and no mechanism for clients or the public in general to review the specific decisions and overall activities of the Board.

RESPONSIVENESS AND FLEXIBILITY

Client service has been recognized by the Board as an area that required special attention, and a Client Services Unit was formed in February, 1993, as the result of the Bider report.

Many comments relating to a lack of responsiveness on the part of the Board were received from external informants and this was seen as a area of great concern for those who are dealing with the Board. However, in the 1990 survey of victims, 46 out of 57 were satisfied with the assistance given by the Board's staff.

External contacts indicate that they are advised by clients that the clients are actively discouraged from making an application to the Board. A further concern on responsiveness related to the form letter which advised applicants not to contact the Board for 6 months, as discussed above. Also, external contacts indicated that in the past clients were told to contact the analysts only between certain limited hours of the day.

Since many comments relating to responsiveness also relate to other areas, they will be discussed under the headings of timeliness, respectfulness and reliability.

RELIABILITY

Concerns were expressed by staff members as well as external contacts on the ability of the Board to provide accurate file information to clients. Steps are also being taken by the Board to update the information system to deal with this issue, and to improve the ability of the Board to track a file within the system.

The main comments received on the issue of reliability related to the Board members and the oral hearings. There was a great concern that the ultimate outcome of a case would depend on who heard it and that there were often large discrepancies in the amount of the award. Board members receive training, and have access to previous decisions. Also, all decisions are reviewed by the Chair. However, external informants expressed the concern that since Board decisions are not published or available, there is no way for them to ensure that there is any consistency.

RESPECTFULNESS

On the issue of respectfulness, many of the contacts express concern regarding the manner in which the clients are treated by Board staff members. External contacts felt

that the staff members were often insensitive to victims who called in for information. A few external informants expressed the concern that staff members were neither polite nor helpful.

When a client or potential client goes to the Board, the information counter is in the same area as the waiting room for the hearings. As a result, concerns for the confidentiality and privacy of the victim have been expressed.

As indicated above, external informants had concerns regarding the manner in which the staff responded to inquiries and applications. However, for the most part, very positive comments were expressed about the manner in which most Board members treated victims at oral hearings, and the Board gets numerous letters thanking the members for their compassion. However, suggestions were made that Board members should have training on issues relating to violence against women to ensure that the members become more sensitive to such matters.

Although many external informants felt that the Board members were very sympathetic and compassionate in their dealings with the victim, a number felt that the Board members were not as sensitive or knowledgeable as they should be in cases of violence against women, particularly on issues such as sexual assault, domestic assault, child abuse, and ritual abuse.

TIMELINESS

This was identified by all informants as the Board's major area of weakness.

The time for processing an application ranges from 14 months to 24 months with delays occurring at various stages within the process. For example, it can take three to four months for a file to be assigned to an analyst once the application is received, several months to gather all of the required information including the reports from police, doctors, hospitals, therapists, or dentists; several months for the investigations to be conducted if deemed necessary, and even when the file has been prepared for a hearing, it can take six to ten months to schedule a hearing. Once the matter has been heard, it takes a further ten to fourteen weeks for the cheque to be issued.

Information from the case sample prepared by Policy Development Division suggests that the time for processing applications is actually decreasing. In that sample, applications made before 1989 took an average of 26.4 months to complete whereas applications made in 1989 or after took an average of 15.7 months to complete. Board staff confirm that the Board's efficiency has increased in that they are now able to complete more files per year.

The responsibility of preparing the file for a hearing has been assumed, for the most part, by the Board analysts. It is their view that counsel for the applicant is not necessary since they will be preparing the file in any event. As a result of this role being assumed by the Board, the Board may be unfairly blamed for a portion of the delay as it will always take time to gather reports from doctors, hospitals, etc. Although there may be ways of making the collection of the information more efficient, to a great extent, this delay may continue to be outside of the staff's direct control.

The number of outstanding applications before the Board is over 6,600. Last year 2,355 cases were completed and, assuming that rate, if no further applications were made to the Board, it would take almost three years to deal with the current backlog.

The fact that the Board ran out of funding by February in the last fiscal year and was unable to pay Board members to hear cases, or pay compensation to victims, added to the backlog of cases. In the absence of an increase in the budget, this will not be avoidable in the future.

The delay in getting compensation is increased even further in cases where the crime has occurred more than one year prior to the application. In those cases, the victim must complete a request for extension (a separate application) and the decision on whether an extension will be granted is made by the Chair.

Although a conviction is not necessary in order for a victim to successfully apply for compensation, the Board will often await the outcome of the criminal process if the matter is before the criminal courts. This will also have the effect of delaying the ultimate award of compensation.

The concern expressed by external and internal informants was that it is unlikely that the victims are getting the service at the time of need. Particularly in the area of counselling, the treatment is required as early as possible in the process and the funding is often not be available until at least three years after the injury has occurred.

As indicated, the current ability of the Board to award interim funding is limited to the areas set out in S.14 of the Act. To date, interim funding has rarely been granted. Recently, the Board has indicated that more emphasis will be placed on interim funding for counselling which, it is hoped, will reduce the ultimate need for pain and suffering compensation.

Previously, the analyst in charge of the file was responsible for returning a call. Given the workload demands, it was often not possible to provide a timely (or any) response. Client inquiries are now handled by the new Client Services Unit, if possible, and there is an expectation that all calls will be returned within 24 hours and that written acknowledgements of receipt of applications are sent out within two working days.

With the previous computer system, it was not possible to get accurate information on each file on short notice. Also, the act of locating a file can be very time consuming since the files move from area to area within the Board offices. As a result, accurate information was not being relayed to clients in a timely manner. With the new computer system that has recently been introduced, it is anticipated by staff that the system can be developed to better meet these needs. Information will be entered into the computer as it is received, and it is planned that the computer will show the up-to-date information on any given file.

COST

Administrative costs

The administrative costs of running the Board are reported at approximately \$2 million. The reported number of completed cases for 1992-93 was 2,355. Therefore, the administrative cost per completed file is an average of \$849.00.

Each case is reviewed by the intake staff, an analyst who prepares the case and the Chief of Investigations who decides whether or not to investigate based on the results of the police questionnaire.

In 1986, a report was prepared by Thorne Stevenson and Kellogg which identified areas of backlog within the system. At that time it was the responsibility of the applicant to provide information and it was suggested that the Board take a more proactive approach in data collection. As discussed above, the Board has since taken on the role of "preparing" the case for a hearing which means that the analyst will write to all contacts to obtain reports, and follow up when reports are not forthcoming. There does not seem to be any clear distinction of the role of the analyst and the role of a lawyer representing the victim at this stage in the process. For example, if a lawyer is representing the victim in the application, the lawyer would likely gather the reports, but the analyst would also be involved in compiling the file and determining if further reports are necessary for the Board.

According to external contacts, the Board actively discourages the victims from having legal representation. Staff members at the Board confirm that it is their view that lawyers are not necessary for either the preparation of the file or the presentation at the hearing. If, however, there was a clear understanding that the file was to be prepared by any lawyer representing the applicants, and only by an analyst in the cases where the applicant could not get legal or other assistance, this may reduce the time spent on a file by the analyst. (The Board will pay costs of \$500. or \$600. to a successful applicant to cover legal costs and spent 166,968.48 on legal fees for the 1991-92 fiscal year.)

Amount of Awards

Eighty percent of the compensation payments made to clients is being paid as pain and suffering awards. The remainder is paid to the applicant for other types of compensation including counselling or pecuniary losses. The average pain and suffering award is approximately \$4,000.

Value for tax dollars

Arguably the total amount of \$15 million that is being spent on the CICB is relatively little in terms of the value of having such a program for victims. However, any success of the Board must be measured in terms of how many people it is actually serving. As stated above the Board is receiving applications from less than 4% of victims and has a two to three year backlog of cases currently in the system (approx. 6600 cases). If you look at the total amount spent by the Board for one year as \$15 million, and divide that by the total number of cases that were completed in that year (2355), you get an average cost of \$6,369 per file. If you take the annual budget of \$15 million and divide it by the number of applicants annually (1991-92 fiscal: 3506), the average amount available per case, in the current budget, would be approximately \$4,278.

The current system leaves many unanswered questions in terms of value for the dollar spent. The issue of how the money is given to the victims is an important one. Although the amount may be a symbolic amount for some victims, they are free to determine how they wish to spend the amount awarded for pain and suffering, and this is seen as a very important consideration. There is an assumption built into this system that the victims know what is best for themselves. Any concern of a paternalistic state pre-judging what is best for them does not exist. The likelihood of this concern being expressed is much greater in provinces where the mandate of the Board has been limited to providing referrals and funding for counselling, or where the money is used in a way that the government itself has determined will provide better value for the dollar spent.

A2. Criteria for a Client-Focused Organization

COMMITMENT TO PUBLIC SERVICE

The Board is a quasi-judicial administrative tribunal. The Board members are appointed by order-in-council, and the staff members are employees of the Ministry of the Attorney General, and, as such, are public servants. The staff and Board members describe the Board as a victim-centred Board, and the purpose for the existence of the Board is to

assist victims. It appears, however, that due to workload issues and client expectation, the Board and staff members, although committed to public service, may not be getting that message across as effectively as they could.

ATTENTION TO STAFF SUPPORT

For many years, the Board has been operating with a large backlog of cases and limited resources. A quote from the 1986 Thorne Stevenson and Kellogg report stated: "It is clear that the Board's current resources are inadequate to meet its mandate." At that time, the Board was receiving 1,697 cases per year (and increase from 1250 in 1982), and the Board had 19 full-time staff members. Now the Board receives approximately 3500 new files per year (1991-92 figure was 3505) and has 32 full-time staff members. The serious lack of funding for both transfer payments for victims' compensation and operating funds was again identified in the 1991 audit report and a 1991 Treasury Board submission.

As indicated above, the Board has recently created a Client Service Unit and has set standards for appropriate service delivery. This was a result of the Bider report, and the Board currently has an implementation committee looking into the implementation of other recommendations in the report. The Board is also reviewing all processes and procedures, and has recently invested in a new information system.

Until recently, very few of the staff members were "computer literate". Since a new system has been installed in the last few months, staff are currently undergoing training for the new system.

The phone system has also been identified as an area of problems for the Board. Until recently, there were only four phone lines into the Board and this was not adequate given the level of demand. The phone service is being revamped and the Board is looking at a new automated system.

The training received by Board members consists of a three day session for new members, and ongoing educational sessions arranged by the Board Chair during the four Board meetings per year. Given the demands of the work and the lack of resources there is limited training for the staff members, and most of the training is on-the-job training. Given the fact that the staff rotate frequently to acting positions within the Board, the Bider report recommended developing operating procedures and revised job descriptions for all staff members.

The Board's location has recently moved to new offices at 439 University Avenue, 4th Floor. All staff members are now located on one floor in modern, comfortable offices.

AMONG STAFF

The Bider report, prepared in 1992, outlines a situation of low morale within the office. Various staff had been frequently shifted from position to position, and concerns were expressed about the level of expertise of co-workers. Concerns were also expressed regarding the "considerable disharmony among senior members of the management team".

Since the Bider report, the management team has changed and a new registrar has been appointed. Efforts are being made to implement the Bider report through an implementation committee that has recently been formed and will meet on a regular basis.

B. Criteria to Establish Well-Being

EMPOWERMENT

The mandate of the Board is to provide compensation to victims. However, there have been many concerns expressed by external informants regarding the lack of effort of Board staff members to keep the applicants, or their lawyers or other representatives, informed or even involved in the process.

The most effective empowerment of the clients most likely occurs at the oral hearing. The combination of being heard and receiving a monetary award, even if a token amount, appears to have a very positive effect on victims. Most external informants, although recognizing the value of documentary hearings in many cases, indicate that the oral hearing remain an option for the applicants.

REFERRAL

Often the Board will be contacted by the victim immediately after the crime has been committed. In those cases, the Board has recently developed a referral list to be able to refer the caller to a more appropriate and timely service, such as a rape crisis centre, a women's shelter or the Victim/Witness Assistance Program.

A more concerted effort in this area may provide the needed assistance to the victim and, as a result, may help to address the ultimate need for pain and suffering awards. The earlier an applicant receives counselling, the earlier the healing process will begin.

C. Criteria which Ensure Right:

FOSTERING

Concerns have been expressed by external contacts that would suggest that the rights of the applicants are not being fostered by the Board. These concerns include such issues as the initial screening process where potential applicants are discouraged or told over the phone that they would not be entitled to compensation, the delay, the difficulty faced by applicants in getting information about their files, the lack of information about the Board's policies and procedures, and the staff's subtle or active discouragement regarding legal representation.

As indicated above, most external informants suggest that the victims should be given the option of proceeding by either documentary or oral hearing. At present, it is not clear whether the victim is clearly informed that it is a choice to proceed by a documentary hearing as opposed to an oral hearing. A process which ensures that the victim is aware of that choice and is able to exercise the option is preferable.

EQUITY

Equity of access

It is clear that the compensation available for victims of crime is not being equitably distributed among all victims of violent crimes. In considering the number of victims of violent crime for any given year in Ontario, and the number of applicants to the Board, access to the Board's compensation is not equitable.

It also appears from comments from the Board staff and members that the Board is not reaching out to or serving people from all cultural or racial groups in Ontario.

Equity of outcome

The Board Chair reviews all decisions with a view to ensuring consistency in decisions. However, concerns have been expressed by external contacts that there is no consistency in outcomes of various cases even where the facts are similar. The outcome will depend on the members hearing the case, and copies of previous decisions are not publicly available to ensure consistency.

EVOLVING

This program is an important program in recognizing that the victims have rights in society. However, there has been little or no staff training on the issue of individual rights, mainly due to workload demand and lack of resources.

PROTECTION

The Board provides compensation to victims of domestic assault and incest and, as a result, recognizes the right of individuals in relation to acts of other family members.

Also, there are provisions for dealing with compensation awarded to children or persons of unsound mind or incapable of managing their affairs to ensure that these people, not others, benefit from the award. These amounts can be paid to family members or can be paid to such other person as the Board considers appropriate, "and shall be administered by the payee for the benefit of the person".

D. Criteria which Focus on the Community

Given the fact that the Board is a quasi-judicial tribunal, there can be no direct control exerted on the Board from either the state or the community from the community level. However, comments are often received by the Board from various sources in the community regarding the Board's processes and policies. In 1990, a survey was conducted and responses were received from various stakeholders in the community including hospitals, doctors, police, lawyers and various victim-focused community groups.

E. Criteria which Position Programs On a Continuum of Supports

DISTINCTIVENESS

This is the only program that provides compensation for pain and suffering to victims of violent crime, and is the only program that focuses on the victim and allows the victim to tell his or her story and receive recognition.

Further, it is the only program that will provide certain pecuniary losses such as funeral expenses, wage loss if the victim does not have disability insurance, Workers' Compensation Board or other insurance, moving expenses and various other expenses that may be considered appropriate by the Board.

In the area of funding for counselling and therapy, the issue becomes more complex. Clearly there is funding available through OHIP for physician services relating to counselling or therapy, but other therapists are not covered by OHIP. The OHIP funded services are often not seen by the victims as the most appropriate services. There are, however, various programs funded through COMSOC that could be available to victims, but there are also long waiting lists for most programs.

In relation to counselling services for children, external informants advise there are often services available through the Children's Aid Societies or other agencies, and funding from the Board for counselling may not be necessary. In reality, a request for funding for counselling for children or others may be last resort if no other services are available in the community.

If pain and suffering awards and recognition of the victim are the main things being achieved by the Board for the victim, consideration must be given to how this can be achieved more efficiently and with less aggravation for the applicants.

DELIVERY OF CLIENT SERVICES

The program would be able to reduce the need for direct client contact if it was able to process the applications more expeditiously and able to provide up-to-date information for the applicant. The Board does not have the mandate to provide the ongoing support that many victims may need. Its focus should be on providing compensation in the most expeditious and client focused manner possible. Therefore, extensive contact with the applicants should not be necessary as long as the applicants feel that they continue to be part of the process.

LEADERSHIP, LINKAGES, TRAINING AND PUBLIC EDUCATION

As discussed above, the Board provides a distinctive role in the compensation of victims of violent crimes.

To a certain extent, the Board has interaction with other programs for victims in that it provides information to other programs such as Victim/Witness, Women's shelters, police, hospitals, rape crisis centres. Also the Board is now making a formal effort to refer victims to other available services.

The Board should be informing the public of its mandate and should also be ensuring that other groups in the continuum of supports have the necessary information in order to make appropriate referrals to the Board.

F. Criteria for Cost-constraint and Administrative Simplicity

COST EXPENDITURE REDUCTION

As indicated above, the under-resourcing of this program has been noted for many years. One of the reasons given for the Board's reluctance to make application forms available and ensure public awareness is the fact that the Board is not funded to meet its current level of demand.

Although there may be ways of decreasing the administrative cost by increasing the efficiency of the Board (and decreasing the staff time spent on each file), increasing the administrative efficiency will not address the overall fiscal concern. Even with less than 4% of all potential applicants applying to the Board, it is clear that the current funding does not cover the current demand. The inability to meet the demand will be even more critical if there is an increase in accessibility and an increase in the number of applications being made.

Even if the current funding remains static, difficult issues such as limiting the mandate of the Board need to be addressed. Therefore, any reduction or cost savings identified within this program, will mean a further limiting of access to compensation for victims.

COST-EFFECTIVE CRITERIA

The number of cases completed by the Board each year in relation to the administrative costs of running the Board suggests that the administrative cost per case is \$849. In comparison, the administrative and service cost for the Victim/Witness Program is estimated at \$250.00 per case. CICB, however, is the only program which provides compensation to victims and, as such, it may be difficult to compare its cost to that of other programs in any meaningful way. The total average annual cost per completed case is estimated at \$6400.

G. Broader Corporate Criteria

COMMITMENT TO RESPONDING TO CLIENTS

As a body set up by the government to focus on victims' issues, steps should be taken to ensure that the Board is really addressing its clients' (potential and actual) needs.

RECOGNITION/FIT WITH GOVERNMENT-WIDE PRIORITIES

As a key focus of this government is on victims' issues, the importance of this program cannot be underestimated. This is the only program providing compensation to many

victims of violent crime. A coordinated approach to the delivery of all victim related services would be beneficial.

RECOGNITION/FIT WITH OTHER MINISTRIES' ISSUES AND APPROACHES

The other ministries which have involvement in the areas of victims' issues include the Ministry of Health in terms of counselling services, the Ministry of the Solicitor General through the police, and the Ministry of Community and Social Services through its community programs or Children's Aid Societies.

RECOMMENDATIONS

Regardless of the ultimate mandate of this Board, areas where the Board could increase client service were identified by both internal and external contacts.

The Board is currently taking the initiative in a number of areas to improve client service. A new Workload Measurement Program has been developed and is being implemented. This, it is hoped, will measure the output of the Board at various stages of the process and identify the areas of strengths and weaknesses. The Board is also reviewing the form letters in order to make them more responsive to client needs.

The following recommendations are made in light of the stated criteria for client-focused service, and would be applicable in all architectural options, discussed in Section VIII which consider maintaining the Board.

NEEDS MET

1. Where possible, the Board should continue to process applications by way of "documentary hearings", but even in cases where a documentary hearing is not possible, the decision of whether an oral hearing will be held should be made by the applicant.

Analysis:

The documentary hearing route is clearly a way of expediting the application process and should be frequently used by the Board. In order to ensure that the process is as efficient as possible, standards should be set by the Board for the quick scheduling of these matters for a documentary hearing and the quick turnaround time of these matters by Board members.

Since many see that oral hearing as being the most important part of the process and as being therapeutic for the victim, the opportunity to have this hearing should be available to all applicants.

2. Increase emphasis on interim funding for counselling and ensure that staff members are making referrals to other agencies, as appropriate.

Analysis:

As discussed above, it is important to ensure that appropriate counselling and therapy is available to the victim at the earliest possible stage. Recently the Board has indicated that it has been placing more emphasis on interim counselling. An expedited process for dealing with these request should be implemented. Also, steps should be taken by the Board to ensure that more victims need to be aware of the ability of the Board to make these awards.

ACCESSIBILITY

3. Make application forms readily available.

Analysis:

This is an area of concern for most external informants. If the Board is to be accessible to all victims of violent crimes, the application form must be available. Although this may result in an increase in the number of ineligible applicants, the Board should develop a process for making an early determination of whether the applicant qualifies for compensation.

4. Provide an information sheet to all applicants that clearly outlines the information that will be required by the Board.

Analysis:

It is likely that the applicant's need to contact the Board for clarification will be reduced, and the process will be more efficient, if the applicant clearly understands the exact information that will be required.

5. Streamline the process involving requests for extensions and combine as part of the actual application.

Analysis:

As it is highly unlikely that a request for an extension will be denied, it would be more efficient to combine this with the application for compensation. This would involve one trip to the Board at the outset and would avoid further unnecessary delays.

RESPECTFULNESS

6. Provide privacy for clients visiting the Board.

Analysis:

Currently the Board is set up to deal with inquiries at a counter that is located in the middle of the waiting room for the people waiting for hearings. As many applicants will be uncomfortable in relating details of the crime committed against them, a more confidential setting should be used. This may involve simply using a meeting room in which to explain the process to a prospective applicant.

7. Provide information or training to staff members and Board members on issues relating to victims of violent crimes including sexual abuse, child abuse, ritual abuse.

Analysis:

The issue of appropriate training will depend on the ultimate mandate of the Board. At a minimum, it would be helpful for staff and Board members to obtain training on general issues relating to victims and client service.

RELIABILITY/ACCOUNTABILITY

8. Adapt new computer system to address Board as well as client needs.

Analysis:

In the past, concerns were expressed about the ability to get accurate information from the Board. Recently the Board has acquired a new computer system and staff members are now obtaining training. In order to maximize the use of the system, all information currently collected and used by the Board is under review. In keeping with that exercise, it is recommended that any changes that are

implemented be reviewed in the context of client needs. For example, if the clients of the Board are calling for accurate up-to-date information on a file, the system should be developed in a way that can provide this information to anyone at the Board who may be answering the inquiry, or any staff member who may be involved with the file.

TIMELINESS/RESPONSIVENESS:

9. Simplify the process for collecting medical, dental, police and other reports.

Analysis:

At present, with the exception of the police reports, the necessary reports are gathered by the analyst whose role is to prepare the file for hearing. The police reports are requested and reviewed by the Investigations Unit.

To a great extent, the delay caused in obtaining these reports will be outside of the control of the Board. However, it appears that there are ways to speed up the process of gathering information, such as including the required fees for the report with the request for the report. At present, the fee required will differ from doctor to doctor or facility to facility. A set fee for specific reports, preferably set by regulation, would assist in obtaining the necessary information in a more efficient manner. Also, a form developed to get the specific information that is required would expedite the process and would ensure that the appropriate information is received in the first instance.

Clear authority on the part of the Board to collect the information from police would also expedite the process, and possibly cut down on the time spent by the investigators to get details relating to a file. At present, the Board relies on its investigators to obtain the necessary information, and to follow-up if it is not forthcoming from the police.

10. Review the positions of analyst and investigator with a view to combining the responsibilities of both positions into one position.

Analysis:

As discussed under recommendation 9, the Board's role is to assist in the preparation of the case for the hearing. This role is now being fulfilled by two distinct staff members: the analyst who gathers information, and the investigator who goes out to investigate the crime. The end result of the investigation is a

report which outlines the significant details of the crime. This information is gathered by the investigator actually going to the area where the crime was committed, tracking down the police officer, and interviewing the police officer, and any witnesses and the offender, if necessary.

It is recommended that the Board take a careful look at the value being added by the report, in terms of the time and money spent in gathering this information. The police officer can attend the oral hearing and the report can be entered into evidence considered in a documentary hearing, without the investigator's report. Although Board members have commented that the report is very helpful, it may be possible that having a staff member who was responsible for ensuring that all relevant information is collected, combined with clear authority on the part of the staff to get the required information for the police, would simplify the process.

EQUITY OF ACCESS

11. The board should take active steps to increase public awareness.

Analysis:

This issue was also addressed in the Advisory Committee report in 1991. The results of the 1990 survey of stakeholders in the community suggested that many contacts in the community were not aware of the Board's mandate, and as a result, were not referring appropriate victims to the Board. It is recognized that an increase in public awareness will mean an increase in the number of applications being made. An increase in the public awareness of the Board will increase the equitable distribution of available funds. The level of demand is an issue which needs to be addressed by reviewing the Board's overall mandate.

E. OFFICE OF THE OFFICIAL GUARDIAN

FINDINGS

A. Client-Focused Service Criteria

A1. Traditional Client Satisfaction Indicators

NEEDS MET

Informant Views

Informants were of the view that the services provided by the Office of the Official Guardian met client needs to a very large extent and provided a high quality of service. Interviews revealed strong support for the continuation of the Office and its current mandate. No one feels that any of the current services provided by the Office, in either the personal rights or property rights side, should be discontinued or curtailed. Suggestions, however, were made with respect to both focusing the mandate more on the provision of legal services to children (as opposed to other clients, such as mentally incompetent persons and absentees) and on ensuring that services were truly last resort and provided only when would be of benefit to the client. Both of these suggestions will be discussed in Section VIII of the Report ("Architectural Options").

Informants noted that the services provided by the Office of the Official Guardian met the needs of child clients in the following ways:

- provides them with a voice in important matters that will affect their lives and recognizes their basic right as a person to be heard;
- assists clients to advance their position in proceedings where, for example, neither their parents nor the state are necessarily acting in their best interests;
- ensures more balanced and accountable decision-making by ensuring that all evidence is before the court and tested;
- protects clients in many cases from the emotional trauma of protracted litigation by fostering settlement of the case: the Office has, for example, a 90% settlement rate in custody/access cases;
- assists the child to understand the process and to obtain whatever other services (e.g. counselling, therapy) they may need;

- protects the child's right not to express a preference if that is their choice.

Notwithstanding the Office's respected strengths in meeting the needs of clients, concerns were expressed with respect to the role of OG personal rights lawyers. These concerns are discussed below.

Role of Personal Rights Lawyers:

Most informants were of the opinion that the role of OG personal rights lawyers, with the exception of those lawyers who represent children admitted to secure treatment facilities, lacks clarity and needs to be more strongly defined. It was suggested that Head Office policy is too "soft"; as a result, there is an inconsistency of approach and general confusion on the part of the client, the Bench and the Bar as to what service an OG lawyer will provide. Informants were of the view that the issue of role goes to the very heart of service delivery and, dependent on what that role is defined to be, may or may not meet the needs of child clients.

The issue of the role of an OG lawyer concerns both the role that he or she plays in representing a child at trial in both custody/access cases and child protection cases, as well as the role played by counsel in introducing evidence. These two roles are discussed below.

a. General Role in Child Representation

This role concerns whether an OG lawyer should assume the traditional role of legal advocate in representing children and advance their instructions, even where they are perceived to be contrary to "best interests", or whether their role is to serve as a "friend of the court" or a "guardian ad litem", or some combination of the three. A friend of the court, known as an amicus curiae, does not represent a client and acts as a neutral assistant to the court by, for example, ensuring that all relevant information is brought out. The role of a guardian ad litem or litigation guardian, on the other hand, is to determine what the "best interests" of the child are from the perspective of a responsible adult; accordingly, the views of the guardian placed before the court through the guardian's lawyer may or may not coincide with those of the child client.

As noted above, the Office of the Official Guardian has prepared guidelines dealing with the general role of counsel. Informants, including some panel lawyers, were unaware of these guidelines. Others noted that they contain some ambiguity concerning the most appropriate role. The guidelines appear to suggest a number of different roles - for example, an advocacy role ("advance the views of the child client"), and a combination of the roles of guardian ad litem and amicus curiae ("where counsel determines the child's wishes, if followed, would place the child in a position of peril, counsel should place the child's position before the court and ensure all relevant evidence is called to

assist the court in making a determination in the child's best interests"). Moreover, it was noted that these guidelines fail to address the issue of counsel's role where the child's wishes could not be determined because the child was too young or unable for other reasons to provide instructions. Further, it was noted that additional confusion was created by the Law Society's 1981 ruling on the role of a child's lawyer, which found that the traditional lawyer/client relationship exists between a lawyer and child unless legislation specified otherwise.

Informants suggested that this lack of clarity resulted in different roles being assumed by different OG lawyers - roles which were dictated, for example, by a lawyer's particular predisposition to a case or by the expectations of the court. Indeed, interviews of OG lawyers (both in-house and panel lawyers), and articling students revealed a wide divergence of views as to what they felt their role to be. For example, where a child was able to instruct, some stated that they strictly followed the Law Society's ruling and maintained a traditional lawyer/client relationship; others noted that they always put a child's wishes before the court but did not advocate them if they were contrary to best interests; still others advised that their role changed depending on the type of case - in custody/access cases they would not advocate wishes if they were contrary to best interests, while in child protection cases, they would.

With respect to the situation where a child is too young to instruct or is unwilling to express a preference, informant OG lawyers and articling students also held different views as to their role. Some were of the view that their role in such cases was to represent the "best interests" of the child and to actively take a position in this regard. Others felt that they were unqualified to do so and chose a more neutral role that approached that of an amicus curiae - ensuring that accurate and complete information was before the court, but not actively pursuing a particular position.

b. Evidentiary Role

With respect to counsel's role in giving evidence, informant interviews revealed that a majority were of the view that it is improper for counsel to give evidence by way of their own submissions unless evidence has been introduced on which to base the submission; otherwise, counsel is giving evidence without affording the parties the right to cross-examine. Ways to introduce supporting evidence include: retaining a social worker to interview the child and others and either filing an affidavit or giving viva voce evidence; requiring the child to testify (whether by direct or accommodated testimony); calling witnesses, such as friends and relatives of the child, or expert witnesses; and presenting clinical evidence which accords with the child's wishes.

The OG Office has very general guidelines concerning this role which provide, for example, that "counsel for the child should avoid characterizing the position as an expression of personal opinion" and that "where possible, counsel should avoid giving

any evidence or background information from counsel table" and "if requested to do so by the court, consent of counsel for the parties should be obtained."

Notwithstanding these guidelines, informants were of the view that the policy respecting this role would benefit from clarification. Interviews with OG lawyers revealed that different counsel were assuming different evidentiary roles which were dictated both by their own personal views and by what different judges permitted in their courtrooms.

Summary of Informant Suggestions

There was a strong consensus among informants that a need exists to clarify both the general and evidentiary roles of OG personal rights lawyers and to ensure that these roles are clearly understood by OG lawyers and students, the Bench, Bar, and, very importantly, clients. In addition, informants noted that it would be important to monitor whether these roles were being followed by the panel lawyers.

In this regard, it was suggested that the Office should reconsider its current guidelines, and the policy underlying the general role of OG lawyers, and produce a clear and detailed policy statement in this regard. Other informants suggested that perhaps consideration should be given to legislating the role.

Analysis of Informant Suggestions

In light of the strong views of informants and the differing views of OG personal rights lawyers with respect to their role, it is clear that a need exists to clarify this issue and that to do so would improve client service.

The confusion surrounding counsel's general role, in particular, suggests that the needs of clients are not being met in a number of ways. For example, as noted earlier, it is clear that there is not a consistency of service being provided to child clients and, as a result, certain clients are receiving different types of representation.

Further, such inconsistency and uncertainty concerning role results in clients not knowing what to expect of the service. Informants were of the view that it was important for lawyers to make it clear to their clients at the outset what role they will be playing. This would be particularly important where a child's wishes did not coincide with a lawyer's view of best interests and, as a result, the lawyer chose not to advocate the child's instructions: if a child were unaware that this was the role the lawyer was going to assume, it could be very damaging to the child and interpreted as a betrayal of trust.

As well, depending upon the role that is adopted, the needs of clients may not be met. In this regard, it is important to review what those needs are and then to tailor the role

accordingly. Herein lies the difficulty of implementing this proposal - deciding what the appropriate role should be.

The views on this issue are varied, have been the ongoing subject of debate for many years and are currently the subject of litigation (see Strobridge v. Strobridge (1992), 42 R.F.L. (3d) 154 (Ont.Ct. (Gen.Div.)) which decision the OG is appealing). For example, there are those who feel that a child's needs in custody/access cases and child protection cases can only be met by giving that child a strong and clear voice - the opportunity to influence a decision that will have a serious impact on their lives. This, it is argued, can only be accomplished by counsel who actively and zealously advance the child's position, notwithstanding that such a position might be contrary to what the lawyer feels is in their best interests. Others are of the view that a child's needs will be better met by counsel who, while taking the child's views into account, does not advocate them where they would place the child in a situation of peril or otherwise not be in their best interests. Similarly, the views are varied concerning how a lawyer's role should best be tailored to meet a child's needs where the child is too young or otherwise unable to express their views and preferences.

In order to provide the Office of the Official Guardian with some guidance on this issue, a summary of informant's views relating to what an OG lawyer's general role should be in order to best meet a child's needs is set out below.

i) *Where a child is willing and able to instruct counsel, a majority of informants were of the following views:*

- *that he/she should serve as the child's advocate and mouthpiece; accordingly, the child's views must be put before the court and vigorously advanced;*
- *that counsel should advocate or support those wishes even if contrary to best interests as such advocacy will encourage more balanced and accountable decision making. It was noted that this is largely a non-issue because in those cases where the child's interests are clearly contrary to best interests, the OG will be hard pressed to find evidence to support the child's wishes. Further, it was noted that it must be borne in mind that the child's wishes are only one factor for the court to consider as part of the overall evidence presented and that they are not necessarily determinative;*
- *that with respect to determining capacity to instruct, no age should be specified as being determinative; rather a decision in this regard should be made by the lawyer on an individual basis perhaps with clinical advice in*

difficult cases. Ability to communicate was seen generally as a rebuttable presumption of capacity. It was noted that even very young children can convey reliable evidence to counsel and verbally express views.

- ii) *Where the child is too young or unable to instruct, a majority of informants were of the view that counsel can still play a valuable role in most cases. It was felt that such a role was vital, for example, in child protection cases where either the parents were unrepresented or had abandoned the child and disappeared.*

Informants, however, were divided concerning whether that role should be to represent the "best interests" of the child or to serve more as an "amicus curiae". With respect to the former, concern was expressed that counsel was not qualified to assume this role, that it usurped the function of the judge, and that it was an inappropriate role in the absence of expert evidence as to best interests. With respect to the latter role (amicus curiae), it was noted that counsel could assist in the following ways:

- *by acting as a neutral, credible third party in mediating and settling the dispute;*
- *by helping the parents focus more on the interests of the child, rather than their own, and the importance of minimizing the damage to the child;*
- *by ensuring that all of the evidence is brought out and tested so that a balanced and fair decision can be made;*
- *by helping the child, where the child is old enough, to understand the process;*
- *by protecting the child's wishes that counsel not disclose his/her preference.*

ACCESSIBILITY

While a majority of informants were of the view that the Office was quite accessible to its clients, and was dedicated to maintaining a high level of accessibility, a number of concerns were raised which are discussed in the following sections.

General Accessibility Issues

Informant Views

As noted earlier, the Office is located in Toronto at 393 University Avenue on the 14th floor and maintains normal business hours. There are no regional offices. It has a general inquiry number which the public and clients can call for information about the service. While this number is not toll-free and collect calls are generally not accepted, the Office attempts to make an exception in the case of children callers and where an adult caller appears to be in distress. The receptionist is fully bilingual.

As part of its commitment to ensuring accessibility to its clients, the Office has a children's playroom with a one-way mirror where younger child clients can meet with their lawyers and social workers in a relaxed setting. In addition, the Office encourages its panel lawyers outside of Toronto to have a child-focused space for interviewing children, which many of them do.

While the Office is concerned about ensuring accessibility to the public and its clients, the following concerns were raised by informants:

- the volume of general inquiry calls is very heavy with the result that calls are often bounced to several people or not picked up;
- general inaccessibility of the Office to persons outside of Toronto who have difficulty in obtaining information/phone number of the Office and are restricted by the cost of making long distance calls;
- no "storefront" presence - the offices are located on the 14th floor of an office tower in downtown Toronto;
- children who call cannot retain a lawyer on their own and are told that parental intervention is needed to obtain a court order;
- no child-focused space for the "older" child;
- little public education directed specifically at children.

Summary of Informant Suggestions

Informants had a number of suggestions with respect to improving the general accessibility of the Office to the public and clients, which are discussed below.

i) Toll-Free Number

Many informants suggested that the Office should have a toll-free number. As discussed earlier, the policy of the Office is only to accept collect calls in very limited circumstances.

ii) Voice Mail

At present, the Office is not equipped with voice mail and, as noted, concerns were raised that a number of calls were not being answered because of the heavy volume of incoming calls.

iii) Child-Focused Space for "Older" Child

It was suggested that, in addition to the children's playroom, an interview room for the older child be set up with, for example, couches and chairs.

iv) Regional/Local "Store-Front" Offices

The suggestion was made that accessibility to child clients and the general public would be enhanced if there were OG Offices located throughout the province that had a "store-front" presence.

v) Child to Retain Counsel

At present, OG counsel can only be retained by court order. The suggestion was made that, in order to make the Office truly accessible to its clients, children should be able to retain OG lawyers on their own without parental intervention or court order.

Analysis of Informant Suggestions

While implementation of the above suggestions could enhance accessibility to the Office, there are associated costs, some of which are clearly more substantial than others. For example, the cost of a toll-free number can cost programs upwards of a \$1 million. The cost of setting up offices throughout Ontario is much more and is discussed in Section VIII dealing with Architectural Options.

The proposal that children be able to directly retain legal counsel not only has significant costs associated with it, but represents a substantial divergence from the way the Office currently does business. While in the past the Office entertained direct referrals from outside persons, such as parents, school principals and doctors, it was forced to discontinue this practice because of the Office's inability to meet the ever-increasing

demand for its services; accordingly, it implemented the policy that referrals be by court order. In addition to the possible cost implications of this proposal, concerns were raised by a number of informants that children are ill-equipped to access and understand the legal system, including the OG's Office, on their own.

Public Education

Informant Views

While the Official Guardian's Office is concerned about public education and has been quite proactive in this regard, a general reluctance "to advertise" has been expressed because of concerns that the Office could not handle an increased workload. The Office has attempted to meet its responsibility in this regard in the following ways:

- distribution of brochure entitled "Where Do I Stand" to schools. This brochure, which was prepared by the Communications Branch, provides the older child with general information about custody and access proceedings and includes a brief reference to the Official Guardian's Office;
- public speaking engagements - average of two per month at a wide variety of organizations including the Children's Aid Society, educational institutions (colleges and universities, law schools, high schools and public schools), parent's associations and support groups, hospitals, judge's conferences, and advocacy organizations. The OG not only responds to invitations to speak, but is proactive in seeking out invitations;
- in 1991, the Office prepared and distributed three editions of the OG Newspaper to approximately 700 centres including lawyers, hospitals, CAS, judges, child and family services organizations, and counselling centres. The paper included both general information about the Office and a discussion of specific issues, with some articles in French. The paper was very well received, but had to be discontinued because of lack of funds;
- in 1991, a draft brochure was prepared internally entitled "A Lawyer for your Children: The Office of the Official Guardian" targeted at parents which informed them of what the Office does and does not do. This initiative was discontinued because of lack of funds.

Notwithstanding these initiatives, most informants expressed the view that a need exists for better public education with respect to the services that the Office provides. External informants noted that there is widespread ignorance about the OG's role not only on the part of the public (including children, parents and others) but lawyers and court

administrators as well and that information about the service is often difficult to obtain. Office staff reported that a very high volume of calls are received on a daily basis inquiring about the services generally.

Summary of Information Suggestions

Informants made the following suggestions with respect to public education.

i) Information Packages

It was proposed that the Office should prepare a number of different information packages directed at specific audiences, for example: a general brochure for public distribution; materials for children, with different age groups taken into account; materials specifically for parents; as well as information targeted at lawyers and court administrators. It was noted that this information should be in plain language and available in languages other than English. Informants further suggested that information about the Office should be widely disseminated and should, for example, be obtainable in court houses, shelters, schools, MPP offices, hospitals, libraries, the government bookstore, police stations, lawyer's offices, the CAS, and the OG's Office itself.

ii) Children's Video

A number of informants suggested that child-oriented videos should be prepared and directed at different age groups explaining the role of an OG lawyer.

iii) Outreach

It was suggested that the Office continue and increase its outreach activities, particularly in regional areas, including more public information sessions and utilizing such media as community newspapers.

iv) General Information Number

Pursuant to this proposal, the Office would set up a special toll-free information line which would provide the caller with pre-recorded general information about the service, with access to a live person if required. Staff advised that, in many cases, inquiries are fairly general and not difficult to answer and could be answered by a pre-recorded message.

Analysis of Informant Suggestions

All of the proposed suggestions relating to public education discussed above would improve upon the Office's visibility and accessibility to the public and its clients. The downside, however, is the associated cost of implementation and the likelihood that requests for OG services would dramatically increase.

As noted earlier, the Office has already considered most of these options and either been unable to implement them, or forced to discontinue their operation, because of cost constraints. Part of the costs associated with many of these public education initiatives is the time commitment required of OG staff, for example, in actually conducting outreach public education activities or in designing and preparing information materials and video presentations. The Office already carries a heavy workload and many of the current public education activities are conducted by staff on their own time.

The Name of the Office and Focusing the Mandate

Informant Views

There was general agreement on the part of both internal and external informants that the name of the Office was a barrier to accessibility. It was noted that the name "Official Guardian" is perplexing to the public, does not assist the public in understanding the Office's mandate and is often confused with "guardianship". Informants warned that this confusion would only be exacerbated when the Office of the Public Guardian and Trustee is implemented.

Summary of Informant Suggestions

Informants suggested that the name of the Office should be changed to reflect more accurately the nature of the Official Guardian's business and that, in addition, the OG should consider restricting its services to children. It was suggested that the word "children" should appear in the title, as in "Official Children's Lawyer", or "Ontario Children's Representative."

Analysis of Informant Suggestions

While changing the name of the Office could assist the public in accessing the service, a number of informants were concerned that a different name might not accurately reflect the broad scope of the Office's mandate. As discussed earlier, at the present time the Official Guardian represents not only children, but mentally incompetent persons not so declared and psychiatric patients in certain cases, as well as unborn and unascertained persons and absentees. As noted above, a number of informants felt that accessibility of

the service would be enhanced, however, if it were limited to child clients. It is also important to note that any name change or change in mandate would necessitate legislative/regulation amendments.

CLIENT ACCOUNTABILITY

Informant Views

The Office of the Official Guardian is very concerned about maintaining a high level of client accountability, but notes that there are difficulties involved in measuring objectively the quality of legal services provided to children. In an attempt to make the Office as accountable as possible, the OG has adopted the following measures:

- regular meetings with different groups of stakeholders (e.g. the judiciary, Bench and Bar Committees, professional organizations and community agencies) to discuss ways of improving the delivery of services;
- regular meetings of the York Local Committee, which was established in the early 1980s and functions as an advisory committee. It has representation from the Toronto panel lawyers, in-house counsel and social workers, the CAS and the Bench, and primarily deals with systemic issues related to improving client service in the court system;
- a public complaints procedure whereby verbal and written complaints are responded to in a timely and appropriate manner. Every complaint is personally dealt with by one staff member and in whatever way the complainant wishes or is appropriate (e.g. personal meeting; over the phone; in writing). The Deputy OG and the OG are both available to personally discuss a complaint if requested. The Office has taken steps to publicize its complaints procedure by, for example, apprising all CAS organizations about it.

In addition, consideration was given to setting up a more regionally-representative advisory committee that would have included senior panel lawyers from every region; however, as a result of cost constraints, this proposal was not implemented.

Informants were of the view that the Office was very accountable to its clients and complimented the current staff for their efforts in this regard; they noted that it was important that this level of accountability be maintained. Some informants, however, were unaware of the public complaints procedure notwithstanding the Office's attempts to apprise stakeholders about it and suggested that it should be more widely publicized particularly to children.

Summary of Informant Suggestions

In order to ensure that the Office remains as accountable as possible, the following suggestions were made:

i) Publicize Complaints Process

As noted earlier, a number of informants were unaware that the Office had a formal complaints procedure and suggested that it should be widely publicized in, for example, information packages distributed to clients, other stakeholders, and the general public.

ii) Regular Input from Clients

It was suggested that more regular input on quality of service be solicited from clients, in addition to other stakeholders. Such input might be obtained routinely at the end of a case from older child clients. Other suggested ways to obtain input included suggestion boxes and forms, client focus groups and surveys.

iii) Advisory Committee

Most informants were of the view that the Office would be greatly assisted by the input of a multidisciplinary and regionally representative Advisory Committee which would meet, for example, twice a year to, inter alia, discuss issues, help set standards/guidelines, and make recommendations to improve service. Such an Advisory Committee would be more broadly representative than the current York Local Committee and could, for example, have representatives from the Bench, Bar, CAS, parent's groups, panel lawyers, Aboriginal and other ethnic communities, as well as children's experts and children themselves. The importance of having the involvement of representatives of the actual client group on such a committee was strongly voiced by many informants.

Analysis of Informant Suggestions

The above discussed suggestions would assist the Office in ensuring that its current high level of accountability is maintained. With respect to ensuring that clients and other stakeholders are better aware of the Office's complaints process, the preparation of public education materials would be necessitated which would have attendant costs. Costs are also a factor in setting up a broadly based Advisory Committee; although it is likely that members of the Committee would serve on a pro bono basis, costs would still be incurred in paying the expenses of Committee members.

RESPONSIVENESS AND FLEXIBILITY

Informant's Views

Informants were of the view that the Office is very responsive to client needs and flexible in its service delivery. As discussed earlier, priority is given to children's phone calls and to the importance of ensuring that children are comfortable in the Office and with the professional staff.

As well, professional staff have been delegated decision making responsibility and accountability for their assigned cases. There is also a supervisory support structure within the Office that provides professional staff with timely advice and direction. As a result, client service is responsive and delays are minimized.

Informants also noted that the Office is very flexible in its approach to child representation litigation. Unlike the perception of the Public Trustee's Office, it is seen to approach each case in a sensible and client-focused way directed at maximizing benefits to clients, while minimizing time spent in the courtroom. It was noted that the Office appears to be keenly aware of the benefits to its clients of not involving them in protracted and emotionally costly litigation and is very successful in fostering the settlement of cases. For example, as noted earlier, with respect to custody and access cases, it is estimated that 90% of the cases are resolved without a trial or substantial hearing. It is important to note, however, that notwithstanding this high settlement rate, the Office is not regarded as being "soft" in terms of client representation; informants who have been involved in cases with the OG complimented the professional staff on their strong child-focused, yet flexible, approach to case resolution.

Summary of Informant Suggestions

No suggestions were made with respect to improving responsiveness and flexibility.

RELIABILITY

Informants were of the view that the services provided by the OG were reliable and that most staff, and in particular in-house staff, were very knowledgeable, competent and skilful. Some concerns were expressed, however, with respect to consistency of service provided by contract professional staff and articling students. These concerns are discussed in the following sections.

Panel Lawyers (Custody/Access and Child Protection Cases)

As discussed earlier, the Office retains the services of approximately 510 lawyers across the province on a fee-for-service basis to represent children in custody and access cases and in child protection proceedings. The Office is very committed to ensuring that the services provided by these lawyers are reliable and of a high and consistent standard. In this regard, the Office has undertaken a number of initiatives related to the training of these individuals, the setting of standards and guidelines, and the monitoring of their performance. These initiatives, and informant views with respect to them, are discussed below.

Training

Informant Views

Panel lawyers are re-empanelled every two years and those lawyers who are not performing at an acceptable level are removed from the panel. The most recent empanelling exercise is currently in process. Lawyers are selected based upon the case load in the region, legal experience, and demonstrated aptitude and sensitivity to children's issues. All successful candidates are required to attend mandatory training sessions which they must pay for: new lawyers must attend a one-day orientation program in Toronto; all lawyers are required to attend half-day regional training sessions. These training programs are conducted by staff lawyers and social workers and include the distribution of written materials on relevant topics, as well as workshops and guest speakers.

In addition to reempanelment, the following training related initiatives are provided by the Office:

- local educational and special issues seminars are held throughout the two-year period (e.g. special training on child abuse was provided to Kingston area panel lawyers);
- it is planned to revive the newsletter to panel lawyers which normally includes summaries of relevant case law and informational procedural items (it had been discontinued last year);
- the panel lawyers are encouraged to access the Office's extensive case law file, which the Office is planning to computerize so it will be available to all panel lawyers on disk;
- special letters are also sent to panel lawyers advising them of legal issues that have arisen in their area.

Informants were of the view that the Office's training initiatives were laudable and went a long way to ensuring the panel lawyer's handling of cases would be reliable and of a high quality. It was noted, however, that notwithstanding the considerable efforts of the Office, an unevenness of skill among panel lawyers was evident in some areas, although it was acknowledged that the level of performance had improved significantly over recent years. It should further be noted that an additional improvement in performance level may well be achieved as a result of the empanelment process currently underway.

Most panel lawyers interviewed and members of the Bench and Bar were of the view that the training provided, while of a good quality, was not sufficient and should be more intensive. It was suggested, for example, that the length of time devoted to both general orientation and refresher training was too short; informants noted, for example, that when the child representation program was first introduced, training was held over an intensive three day period.

Informants were also of the view that training needed to be more responsive to the uniqueness of the different regions and that input should be sought in this regard. It should be noted, however, that the Office attempts to do this by seeking the input of senior panel lawyers in the area and by devoting some time to local issues during training. Notwithstanding these efforts, a number of panel lawyers who represent aboriginal children, for example, expressed the view that they would benefit from more intensive training on sensitivity to aboriginal culture, noting that they were concerned about their effectiveness in representing aboriginal children.

As well, informants were of the view that more and regular training was needed on certain fundamental subject matters: for example, how to interview a child; mediation/settlement negotiation training; the different developmental stages of children; sensitivity training with respect to cultural and racial differences; and child abuse.

It should be noted that while the OG's Office provides some training on all of these matters, such training is not provided at each empanelment; rather the OG varies the program and concentrates every two years on different subject matters or themes. As a result, panel lawyers would only receive training in some of these areas every four to six years.

It was also suggested that, in addition to written materials, panel lawyers would benefit from access to videos on such matters as how to interview a child. It should be noted that the Office is planning to make such a video this summer. As well, a video is being shown to panel lawyers during this year's empanelment exercise where children who have been represented by an OG lawyer are interviewed concerning their experience.

Summary of Informant Suggestions

A summary of informant suggestions with respect to the training of panel lawyers is set out as follows:

- that the length of time devoted to both general orientation and refresher training should be of a longer duration than one day and a half-day respectively;
- that training be held annually rather than bi-annually;
- that panel lawyers in each region be required to form their own "associations" and meet regularly both for training and to discuss mutual issues of concern. It was suggested that perhaps a senior panel lawyer from each region might be selected to attend more intensive training programs in Toronto every six to eight months and then be responsible for training the panel lawyers in his/her region;
- that training be focused more on the problems/uniqueness of the different regions and more input be sought in this regard;
- more intensive training on sensitivity to aboriginal and other cultures should be made available, whereby special programs could be held regionally with participants from the local cultural community;
- more and regular training on fundamental subject matters;
- in addition to written materials, provide panel lawyers with video instruction on such subjects as how to interview a child.

Analysis of Informant Suggestions

Both informants and the Office of the Official Guardian are of the view that specialized and regular training for the legal representation of children is vital; that representing children is an important and unique responsibility which requires regular ongoing training and education to ensure that the job is done properly. It is the training and specialized expertise of these counsel that sets them apart from other members of the private Bar in doing this kind of work. Accordingly, increasing the intensity and frequency of good training, which is broadly based and interdisciplinary, can only be seen as being beneficial to client service and increasing the reliability of that service.

Further the importance of panel lawyers receiving more frequent training in certain fundamental skill areas is strongly defensible. For example, central to a panel lawyer being able to provide reliable and competent representation is the ability to communicate with child clients; without such skills, the likelihood of a lawyer being able to obtain instructions from the child - to understand their wishes and advocate them - is seriously diminished. The challenge of communicating with children is only exacerbated when they are also members of a particular cultural or ethnic community or have been the victims of abuse. As well, without regular training in the areas of settlement negotiation and mediation, the continuation of the Office's current high rate of settlement could be jeopardized and children exposed to the harmful effects of delays in the resolution of the legal dispute.

Notwithstanding the obvious benefits of more intensive training, there are other considerations that need to be taken into account. First there are costs associated with increasing the amount and frequency of training. Currently, the operation of the empanelment process and supervision of panel lawyers consumes approximately 25% of in-house counsel's time; clearly, this time commitment would be increased if training requirements were increased, unless different training methods were implemented. Costs to the panel lawyers would also increase as they currently have to pay for their training, take time off from their practices and travel to where the training session is being held. In light of the fact that they receive only \$71 an hour for their services, the costs associated with additional training might discourage a number of them from continuing on the panel.

Secondly, concerns have been expressed about the expertise of in-house counsel to provide more intensive training in certain areas and particularly those in which they themselves have received only minimal training. Accordingly, it would be important to ensure that in-house counsel were more adequately trained and/or that persons with special expertise were brought in to provide training.

Standards/Guidelines

Informant Views

As discussed in an earlier section, the Office has prepared written guidelines that are circulated to all panel lawyers in order to ensure that the service provided is reliable and consistent throughout the province.

Notwithstanding the Office's efforts in this regard, some panel lawyer informants did not appear to be aware of these guidelines. Others suggested that they needed

to be both better publicized and more detailed. It was, however, acknowledged that the guidelines could not be too rigid and should allow for flexibility to accommodate different types of cases.

Summary of Informant Suggestions

Informants suggested that the standards and guidelines relating to panel lawyers:

- should be fleshed out in order to provide clearer direction; it was proposed that greater guidance was needed with respect to interviewing children (e.g. how often, when, and where);
- should be better publicized to ensure that all panel lawyers were aware of them.

Analysis of Informant Suggestions

Augmenting current guidelines and ensuring that they are well publicized would only enhance the reliability of client service and not attract any substantial cost factor.

Monitoring Performance

Informant Views

The Office of the Official Guardian is committed to monitoring the performance of its panel lawyers in between empanelment exercises and has taken the following steps:

- a file is maintained on each panel lawyer which will include any letters of complaint and summaries concerning their performance;
- as of two years ago, panel lawyers must provide written reports on the status of their cases and submit accounts every six months; these are carefully reviewed by in-house counsel;
- CAS workers and judges are encouraged to advise the Office when counsel's performance is inadequate;
- panel lawyers are supervised on a regional basis by in-house counsel (i.e. one counsel is responsible for all panel lawyers in a particular region);
- as discussed previously, a public complaints procedure is in place.

Notwithstanding these measures, a number of concerns were expressed by external informants concerning the performance of certain panel lawyers. The most common complaints concerned lawyers not interviewing the child, interviewing them over the phone, or interviewing them on the courthouse steps just prior to trial. It was suggested, however, that these concerns might be significantly diminished once the effects of the 1993 empanelment process were realized.

Summary of Informant Suggestions

The following suggestions were made by informants with respect to monitoring the performance of panel lawyers:

- that the number of panel lawyers be reduced in order to better monitor their performance. It should be noted that the Office is attempting to do so and reduced the number by 50 this year;
- that, rather than (or perhaps in addition to) requiring panel lawyers to report every six months, it would be appropriate for them to report at each significant stage of a case the same way that legal aid lawyers are required to do (e.g. when they are assigned a case and have assessed the value of their role; when a pretrial is ordered; after any settlement conference; when a trial date is set; upon conclusion of the trial). In this way, performance, the need for the continued participation of OG counsel, and costs could be monitored on a more regular basis;
- that the complaints procedure should be more widely publicized as part of a public education exercise.

Analysis of Informant Suggestions

While the advantages of the above-mentioned suggestions are self-evident in terms of improving the monitoring of the performance of panel lawyers, there are difficulties associated with certain of them.

With respect to reducing the number of panel lawyers, informants noted that it might be difficult to persuade panel lawyers to take on more OG work in light of the modest fee of \$71 per hour and the stressful nature of the work. As noted earlier, the current tariff is considered low and is not comparable to legal aid rates for more senior lawyers (\$84 per hour). While there are many senior lawyers currently on the panel, interviews revealed that they have agreed to assume this work as a community service, rather than to generate profit, and it is questionable whether they could be encouraged to assume more.

With respect to increasing the reporting requirements of panel lawyers, an associated downside is the increase in staff administration time that would be required in reviewing the reports. As noted previously, in-house counsel currently spend 25% of their time training and supervising panel lawyers. Nonetheless, such increased scrutiny of the need for panel lawyers to continue on with a case at each significant stage of a case could result in better and more cost-effective representation for children.

Panel Lawyers (Secure Treatment Cases)

Informant Views

As noted earlier, a special sub-panel of personal rights panel lawyers, together with in-house counsel, represent children before the Child and Family Services Review Board when a child is admitted to a secure treatment facility on an emergency basis. These lawyers receive specialized training, have regular ongoing contact with the Head Office and are perceived by informants to be providing a very reliable and high quality of service to their child clients. Service to clients is provided on a very timely basis and these lawyers are prepared to and do meet a tight timeframe.

Their role with respect to clients is clear and is dictated to a large extent by statute. They serve as advocates for clients at the Review Board, where it can be argued that certain criteria set out in the statute governing admission have not been satisfied (see Child and Family Services Act, R.S.O. 1990, c.11, s.124(2)). An important criterion in this regard is whether the child has a mental disorder (see s.124(2)(a)).

Certain informants have suggested that the service could be made more reliable if OG counsel were better equipped to assess whether this criterion had been met in a particular case. In this regard, it is important to understand that evidence relating to whether the child has a mental disorder is provided in the form of a report prepared by the facility's psychiatrist. It is rare that the psychiatrist will attend at the hearing and be available for cross-examination by OG counsel. Informants noted that it is difficult for OG counsel, as lawyers, to be able to fully understand the report. It was further noted that counsel generally did not attempt to contest the findings in the report by introducing their own evidence as to the mental state of their client, for example, through the expert testimony of an independent psychiatrist who had met with the client. It was suggested that legal representation provided by OG counsel at these hearings would be more reliable if this were done. Similar concerns were expressed with respect to OG representation of children before the court with respect to non-emergency admissions to secure treatment facilities.

Moreover, informants were of the view that some OG counsel were assuming the role of lay psychiatrists in advising children not to request a hearing. Concerns were raised that this role was inappropriate and could have the effect of children not obtaining a hearing in appropriate cases.

Summary of Informant Suggestions

As discussed above, informants were of the view that service to child clients who have been admitted to secure treatment facilities would be made more reliable if OG counsel were able to regularly retain the services of an independent psychiatrist. The psychiatrist could assist the lawyer in appropriate cases by meeting with the child and advising counsel of his/her views with respect to the mental state of the child. Such information would assist counsel both in advising the client whether to request a hearing and in effectively advocating the client's case before the court or Review Board.

It was suggested that such services could be provided by either hiring an in-house staff psychiatrist (who could be utilized on other personal rights cases) or by setting up a panel of psychiatrists who would be willing to do this work on a fee-for-service basis.

Analysis of Informant Suggestions

Retaining the services of a psychiatrist in this respect would improve upon the reliability of the current service. It is, however, important to note that there would be costs associated with this option, unless such services could be retained on a pro bono basis or charged to, for example, the parents of the child.

It is also important to note that, if a resource panel of psychiatrists were set up, it would be important to ensure that the psychiatrists chosen were prepared to make themselves available on short notice in order to meet tight statutory time requirements.

Agent Lawyers - Property Rights Cases

Informant Views

In addition to five in-house counsel who handle property rights cases, the Office retains the services of 50 agent and 29 sub-agent lawyers throughout Ontario. These lawyers, unlike the personal rights lawyers, are not empanelled and there is no associated training program or guidelines with respect to service delivery.

In-house counsel, however, handle a lot of these cases. With respect to cases outside of Toronto, OG staff lawyers do much of the preparatory work on the files and provide the agent with detailed instructions.

Informants were generally of the view that the services provided by agent lawyers were very reliable, although some unevenness in the quality of service was reported. In-house counsel were complimented by informants on the excellent service that they provided and for their client-focused, yet sensible, approach to cases.

Summary of Informant Suggestions

The following alternative suggestions for ensuring that a reliable and high standard of service delivery by agent lawyers is maintained were made:

- empanelment and associated training/orientation session for all agent lawyers similar to that required for panel lawyers, with perhaps special sub-panels for different types of property rights work (e.g. personal injury litigation; estates/trusts litigation);
- in the alternative to a formal empanelment process, that annual meetings be held to discuss mutual issues of concern and new developments in the law;
- in the alternative to the above two suggestions, that agent lawyers be required to formally apply to serve as OG lawyers every two years, but that no formal training would be provided by the Office; rather, agent lawyers would be required to take continuing legal education courses on relevant subject matters provided by the Law Society in order to continue on the panel.

Further, informants proposed that agent lawyers should be provided with some guidelines/standards with respect to their role as OG lawyers: for example, what their role is in certain cases, whether guardian ad litem or advocate; when they should interview the child client and guidelines in respect of that (e.g. in-house staff generally interview child clients where the child is the defendant, notwithstanding that they are acting as a guardian ad litem); and how often and at what stages of a proceeding they should report to the Office.

With respect to the latter issue, it was proposed that, in order to better monitor the performance of agent lawyers and to ensure that their continuing services were needed, they should be required to report at significant stages in a proceeding.

Analysis of Informant Suggestions

With respect to the informant suggestion related to empanelment and training, while this proposal may result in a higher calibre of agent lawyers, it has the downside of associated costs and, in particular, costs in terms of the in-house staff time involved in overseeing the process. Further, it may discourage agent lawyers, who would probably be required to pay for their own training and already consider themselves as being skilled in property rights litigation, from continuing to work for the Office.

It is important to note that, in analyzing this and the other informant suggestions related to training, agent lawyers are often senior lawyers in the different regions who have an expertise in a particular area of property rights law, for example, general civil litigation or estates and trusts law, and often take on this work as a matter of public service. As they most often assume the role of guardian ad litem in representing children and are not required to meet with children and take instructions, the reliability and quality of the service they provide is primarily related to their knowledge and skills in a particular area of law, rather than in dealing with child clients. As a result, the role of the OG Office in providing training is less obvious than with respect to the personal rights panel lawyers. Perhaps the more appropriate forum for training is that of the Law Society and the continuing legal education courses that it provides.

Guidelines and standards with respect to service delivery can only improve and better ensure the reliability of legal representation. Increased monitoring of property rights cases at significant stages in the proceeding will have the attendant benefits of identifying poor performers and ensuring that the case continues to warrant the services of an OG lawyer. Although increased reporting on cases will attract additional administrative costs, it is important to recognize the attendant potential savings to the Office that could be realized.

Agent Social Workers

Informant Views

In addition to 13 in-house social workers, 65 social work agents are retained by the Office throughout the province on a fee-for-service basis to prepare OG Reports and, to a lesser degree, to assist OG lawyers with custody and access cases.

At the present time, there is no empanelment process for social workers or training program. Formal standards/guidelines are not provided to social worker agents, although they have been provided with precedent OG Reports and the Office is

planning to prepare a standards manual. While no formal regular review of an agent social worker's performance has been implemented, the Office advises that a yearly performance appraisal process is in the planning stages. Further, the Office attempts to ensure the reliability of the services provided by agent social workers in the following ways: every OG Report is read and critiqued by Head Office staff; agent social workers are responsible to in-house social workers on a regional basis; and a formal complaints process is in place.

Informants were of the view that, while social work services generally were very reliable, an unevenness of work product still persisted notwithstanding the Office's considerable efforts to ensure a high quality product. For example, in one region, an informant judge advised that he would not request OG Reports because of their quality; in another region, a judge commented that OG Reports were of a poor quality and unsophisticated. These comments, however, were in the minority and must be counterbalanced by other more frequently heard informant views which praised the quality of the Reports and their usefulness. It was noted, and confirmed by in-house staff, that the involvement of social workers in preparing OG Reports results in a 90% settlement rate of cases; cases are settled in instances both before the Report has been written and afterwards. Informants advised that these Reports carried a great deal of credibility and influence with both the parties and the court.

Informants, however, suggested that the reliability of this important service and custody/access assists would be improved upon by adopting some type of an empanelment/training process and to provide agent social workers with more formal standards and guidelines. As both agent and in-house social workers are involved to a large extent in settling cases, it was noted that it would be valuable for them to have good training in this area and standards/guidelines to guide settlement negotiations. Other areas of training that were suggested include how to interview a child, the evolving family configuration of the 1990s, report writing skills, different developmental stages of children and race relations and cultural sensitivity. Further, agent social workers expressed a feeling of isolation and were of the view that, for example, an annual group meeting of agent and in-house social workers to discuss common issues would be of considerable benefit.

It was further noted that the continuing reliability of the services provided by agent social workers could be in jeopardy if the tariff were not increased. Informants were of the view that \$30 per hour was far too low and commented that cases were generally becoming more complex and the Reports more substantive, and that the current rate did not reflect the nature of the work involved. They noted that, if the rate was not increased in the near future, it could have the effect of significantly reducing the numbers of qualified social workers in the field who were willing to assume this type of work. Informants noted that they were already

aware of a number of agent social workers who had stopped working for the Office because of the low rate.

Informants further noted that the reliability of the services provided by the Office would be improved upon if more agent social workers assisted panel lawyers in custody and access cases. It was noted that this was a valuable service to lawyers and clients and resulted in stronger more effective child representation. At the present time, this service is not widely publicized to panel lawyers and, as a result, is infrequently used.

Summary of Informant Suggestions

Informant suggestions with respect to improving the reliability and effectiveness of the services provided by agent social workers are summarized below:

- that agent social workers should be required to be empanelled and trained in the same way as personal rights lawyers. It was noted that it would be particularly important to receive training in such areas as report writing, interviewing skills, different developmental stages of children, mediation/settlement negotiation, race relations and cultural sensitivity. It was further suggested that ongoing training/education be provided through regular newsletters or memoranda;
- that a standards manual be prepared which would address such matters as preparing OG Reports and interviewing children and others;
- that formal yearly performance appraisals of social worker agents be implemented and the Office continue to review OG Reports;
- that social work assists should be made more widely available to panel lawyers;
- that the tariff be increased from \$30. (As will be discussed in the "Cost Constraint" section, one way of defraying the costs involved in increasing the tariff would be to charge for OG Reports).

Analysis of Informant Suggestions

In light of the acknowledged value of social work services in the Office of the Official Guardian, particularly with respect to their value in fostering settlement, it is important to ensure that the reliability of such services is maintained. The suggestions made by informants would go a long way in doing so. Ensuring that agent social workers are well trained and their performance regularly monitored

will only result in better client service. For example, the benefits of a good quality OG Report are many: clients will be assured that their voices will be heard and accurately reflected in the Report; such Reports will have greater credibility with both the parties and the Bench and foster a quick resolution of the dispute; well written Reports will take less staff time to review and edit. Further, it was widely suggested that increased availability of social work assists will result in stronger cases and more confident counsel in representing clients and ensuring that their views are presented.

However, as with respect to other informant suggestions, there will be associated costs - costs involved in the empanelment and training process, as well as the costs resulting from raising the current hourly rate. Nonetheless, as discussed, it may well be a false economy to attempt to restrict spending in these areas as the purchase of the best service may also be the least expensive in the long run. As noted, not increasing the current tariff attracts the risk of losing good people and the attendant problems associated with a high turnover in staff. Not training staff or addressing their feelings of isolation will ultimately affect the reliability of the work product and client service. As a result, the current high settlement rate in these cases could be eroded and clients subjected to lengthy emotional trials which will result in higher costs to the government.

Articling Students

Informant Views

The Official Guardian hires nine articling students each year who, among other responsibilities, carry caseloads with respect to both custody/access and child protection cases. Students have full carriage of these cases and appear in the Ontario Court (Provincial Division). The Office is very committed to ensuring that the services provided by its articling students are reliable and of a high quality. In this regard, the Office has implemented the following measures:

- it carefully screens applicants targeting more mature candidates with appropriate backgrounds and skill sets relating to dealing with children; out of approximately 250 applicants, 50 are interviewed;
- there is a two week overlap with the outgoing students who are given responsibility to assist with the orientation and training of the new students;
- a one day orientation session is held where students attend mini-lectures on different issues with presentation by members of the Bench, private Bar and CAS;

- students are given a reference binder, which includes materials relating to, for example, how and where to interview children, the ages and stages of children, protocol for child abuse cases, how to relate to children of different cultures, relevant case and statutory law, and precedent letters;
- each student is assigned to a principal lawyer;
- on the personal rights side, students are organized in four teams associated with one of the four provincial court locations in Toronto and supervised by the lawyers assigned to those courts;
- ongoing training sessions are held throughout the year on different subject matters such as trial preparation, mediation and interviewing children;
- cases are screened to avoid assigning cases that are too complex to the students.

Notwithstanding these measures, concerns were expressed by some informants with respect to permitting students to handle their own cases. For example, some informants questioned the appropriateness of articling students appearing in court and suggested that such representation could be viewed as "second class" legal representation and trivializing children's rights. It was suggested by these informants that using articling students in this way could jeopardize the reliability and quality of the representation of child clients. These informants were of the view that the students often had not received sufficient training, had been assigned cases that were too difficult, and were inadequately supervised. A further concern was expressed about the continuity of representation as students were only in the Office for a limited period of time. Nevertheless, it was noted that the students were perceived as being very sensitive to their clients, hard working and extremely committed to their work.

Other external informants were of the view that the role assumed by students was appropriate and that most provided an excellent quality of service for child clients. It was suggested, however, that it was vitally important that students be properly trained before being asked to assume cases and that the cases not be unduly complicated.

With respect to the views of the current articling students, it was felt that child representation was an appropriate role. However, the following concerns were voiced:

- that upfront training is inadequate; the one-day orientation session is overwhelming; the two week overlap with the outgoing students is ineffective in providing them with the proper orientation as the students are too busy preparing transfer memos and exposure through them to the different aspects of the job is hit and miss; training on fundamental subject matters is often held too late in the year;
- that the caseload is too heavy and unevenly distributed (e.g. one student had seven trials; one student carried 80 files);
- that some of the cases assigned to students are too complex;
- lack of secretarial/administrative support - two secretaries assigned to nine students;
- students are assigned to work stations which they feel are inadequate in ensuring privacy.

Summary of Informant Suggestions

Informants made the following suggestions with respect to the use of articling students by the Office:

- Discontinue the use of articling students to represent children in custody/access and child protection cases;
- Continue the current practice, but ensure students are better trained and their performance carefully monitored. In this regard, the following reform measures were proposed:
 - provide students with a full month of practically oriented, intensive training during which they would not interview clients or appear in court;
 - during this month period, ensure students receive exposure to their different responsibilities and orientation with respect to fundamental subject matters, such as interviewing children and others, mediation/settlement negotiation, trial preparation and advocacy skills, race relations and cultural sensitivity awareness;
 - provide ongoing training throughout the year on less fundamental subject matters;

- ensure that students are closely supervised and meet regularly with their principals, team lawyers and the articling committee;
- ensure students' caseloads are manageable and evenly distributed, and that the cases assigned are not unduly complex.

Analysis of Informant Suggestions

With respect to the first suggestion, it has been argued that not permitting students to carry child representation cases will result in more reliable and client-focused service. However, it should be borne in mind that a majority of informants were in favour of this practice continuing provided that the students were adequately trained prior to entering the court room and their performance closely monitored.

Moreover, it is important to note that the articling students selected are often as mature and as experienced with respect to children's issues as junior members of the Bar. Further, such experience is invaluable for articling students in preparing them to continue with this type of work, and to handle more complex cases, upon their call to the Bar. The Official Guardian often hires back students from its articling pool and, by providing them with this type of experience during their articles, will be ensuring that clients will be reliably represented by well trained staff lawyers in the future.

Another important consideration is that of cost. If it were decided not to continue with this type of articling program, the cases normally handled by students would have to be assumed by in-house or the Toronto panel lawyers. As a result, the staffing requirements of the Office could be affected and the cost of service delivery increase. If additional funding were not provided to accommodate this change in practice, the quality of service delivery to clients could be seriously affected.

RESPECTFULNESS

Informant Views

Informant interviews revealed that the Office has a good reputation for treating clients respectfully. For example, as noted earlier, special priority is given to child callers and they are treated with courtesy. Further, in interviewing children and attempting to ascertain their views and preferences, staff are aware that a special relationship of trust

must be created; accordingly, they normally interview a child client three to four times and in settings both in and out of the Office where the child will be comfortable and relaxed.

In addition, informants noted that the Office was very committed to respecting a client's cultural, religious and ethnic differences, and whether they had been the victims of some type of abuse. In this regard, it is important to acknowledge that the Office has undertaken the following initiatives:

- race relations training for in-house and panel lawyers; in-house training on child abuse; as well, race relations issues are included in the newsletter sent to panel lawyers;
- special continuing education sessions led by representatives of different cultural communities designed to sensitize staff to cultural differences;
- the Office is in the process of compiling a province-wide multicultural resources list;
- an internal committee on race relations has been struck and a policy adopted which has been sent to all panel lawyers;
- extensive information on many different cultures has been compiled which is available for reference by all professional staff;
- a directive in its guidelines that child's counsel "pursue the child's cultural, native, religious and education interests, where possible";
- priority to aboriginal issues which has included regular liaison with native organizations across Ontario and special prominence at this year's empanelment sessions; as well, files are maintained on all native clients;
- a commitment to employment equity and ensuring that in-house counsel and panel lawyers are representative of different visible minorities; for example, the Office recently empanelled three native lawyers.

While the Office has undertaken many important initiatives related to ensuring respect for its clients, informants were generally of the view that more needed to be done.

Summary of Informant Suggestions

In order to ensure that the Office is as respectful as possible of client differences, it was suggested that more in-depth training with respect to race relations, cultural sensitivity and child abuse be provided.

Analysis of Informant Suggestions

It is vital that OG staff be as informed as possible with respect to cultural differences and the psychology of child abuse. Without such knowledge, professional staff are at risk of not being able to develop a trusting relationship with their clients which is fundamental to effective communication and legal representation. Further, if the professional staff are not perceived as being culturally sensitive and knowledgeable by the parties, they may lose the credibility that is necessary to effect a settlement of the dispute.

The downside associated with this option involves the costs associated with providing such in-depth training to professional staff, and particularly contract professional staff who are situated throughout the province.

TIMELINESS

Informant Views

Timeliness of client service is of importance to the Office and informants were of the view that this criterion of service delivery was satisfied to a very large extent. For example, informants noted that, in secure treatment cases, OG lawyers make themselves available to meet with the child within a day or so of an order being made. Where the OG is acting as substitute decision maker of last resort for a psychiatric patient in a mental health facility, the turnaround time to meet with the client is two to three days. Further, in custody/access cases, should the court deem it advisable that an OG lawyer be appointed on an emergency basis, such requests are also met by the Office within two or three days.

Informants further commented that the preparation time for OG Reports was also quite timely. Rule 70.16(1) of the Rules of Civil Procedure requires that such Reports be completed within a two month period; however, informants noted that, in more complex cases, a Report might take up to four months to complete. It was the general consensus of informants that, while a two month preparation time was optimal, four months could be justified in certain cases. Further, informants were of the view that OG Reports were considerably more timely than assessments under the Children's Law Reform Act which often took six months or more to complete.

Some concerns, however, were expressed with respect to the length of time taken by the Office in deciding whether to take on an OG Report or child representation in a custody/access case. It should be noted that, in making these decisions, the OG has implemented a special process which is designed to ensure that the OG's involvement in the case will contribute meaningfully to the resolution of the case and/or protect the child's interests in the proceedings.

With respect to OG Reports, a special intake team (consisting of the Clinical Coordinator of Social Work and two social workers) was established this year to review all requests for OG Reports. Part of this process involves sending a questionnaire to both parties; if both parties do not respond, the investigation will not proceed. It was noted by informants that, on occasion, the decision whether to take on a case was delayed by one of the parties failing to fill out the questionnaire in a timely manner. As well, other informants were concerned that, without carefully monitoring this process, it might result in undue delays in client service. These same concerns were voiced with respect to the screening process that is in place for custody/access representation cases.

Another issue relating to the timeliness of client service concerns responding to inquiries about minors' accounts. Funds paid on behalf of minors must be paid into the Provincial Accountant's Office where they remain until the minor attains the age of majority. On occasion, the court will order that certain of these funds be paid to the minor on a monthly basis for the child's maintenance. Orders to this effect are obtained by OG counsel every two weeks.

The Minors Fund Manager, as well as OG staff counsel, receive daily inquiries concerning the status of minors' accounts: for example, inquiries are made concerning whether money has been paid into court, whether a monthly maintenance cheque has been issued, what the balance is in the account, and whether interest has been paid on the accounts. In order to obtain answers to these inquiries, the Minors Fund Manager has to personally attend at the Accountant's Office; as a result, there is a delay incurred in responding to clients. Informants were of the view that a computer link with the Accountant's Office would serve to improve the timeliness of client response and save staff time. If such a link were established, OG staff could respond to a client inquiry at the time of the call by calling up the client's account on their computer screen.

It was further suggested by informants that the electronic transfer of funds to minors would improve the timeliness of client service. At the present time, the Minors Fund Manager must attend at the Accountant's Office to pick up cheques prepared by that Office for minors with respect to monthly allowances. These cheques are then mailed by the Office to clients.

Summary of Informant Suggestions

The following suggestions were made with respect to ensuring that client service is as timely as possible:

- ensure that the intake and case selection process with respect to custody/access representation and OG Reports is closely monitored to ensure that client service is as timely as possible;
- increase the capacity of the current Management Information System so that meaningful statistics can be kept on, among other things, the length of time taken to make the decision whether to take on a case, and the length of time to resolve it;
- consider the feasibility of creating a computer link with the Accountant's Office with respect to minor's accounts and to providing for the electronic transfer of funds to minors.

Analysis of Informant Suggestions

It is trite to say that any delay in the resolution of a dispute involving children, particularly those disputes that affect the security of a child, can be potentially harmful to them. It is very important that disputes be resolved in as timely a manner as possible. The Office appears to be keenly aware of the vulnerability of its clients in this regard: the priority the Office gives to settling cases, for example, clearly reflects this awareness.

Any proposals which improve the timeliness of service should be supported. Monitoring of the case selection process and maintaining statistics with respect to the timeliness of case resolution could be relatively easily implemented without high attendant costs.

On the other hand, preliminary investigations with respect to creating a computer link with the Accountant's Office suggests that more substantial costs may be involved. For example, in order to allow outside inquiry access, the Accountant's system would require major security modifications which were not a consideration in the initial design. Further, the hardware being used has the maximum number of users on it and adding more would require an upgrade. Further investigation of this proposal is required.

COST TO CLIENTS

Informant Views

At the present time, legal services are provided by the Office to its clients without charge. Informants were of the view that, with the exception of OG Reports, this current system should be maintained.

It was generally felt that a fee should be charged for OG Reports provided that the family could afford to pay. The amount of \$500 (\$250 per party) was cited by most as being reasonable. Informants noted that where the parties decided upon a private assessment, they would be required to pay upwards of \$8,000, and that, accordingly, it was only fair that some amount should be charged for OG Reports. Informants were further of the view that a relatively simple and expeditious means test could be implemented by the office that would not result in onerous administrative costs to the Office.

Summary of Informant Suggestions

As noted above, informants suggested that the Office should consider charging a fee for OG Reports. This proposal is considered in a subsequent section in this Part dealing with cost-constraint suggestions.

A2. Criteria for a Client-Focused Organization

Informant Views

Informant interviews suggest that the Office of the Official Guardian is a very client-focused organization whose staff are very committed to providing good client service and have an excellent understanding of the link between their work and service to the public. The Office supports its staff's commitment to high quality client service, for example, in the following ways:

- each department provides ongoing training for its staff; the lawyers and social workers in the personal rights branch, for example, hold their own ongoing educational programs and an annual joint program;
- continuing education sessions are held on a monthly basis for all staff;
- as noted earlier, an internal race relations committee has been created with responsibility for organizing training programs for staff and panel members;

- regular performance reviews are undertaken by the supervisors of both professional and administrative staff.
- In addition, internal informants are of the view that working conditions are excellent; recently, the Office moved to more spacious and attractive accommodation and have been supplied with new information technology.

There were, however, a number of concerns expressed with respect to ensuring that in-house staff receive adequate training. It was noted that, as a result of cuts to the ODOE budget of the Office, staff development and training had been significantly curtailed. Internal informants were of the view that this was most unfortunate as adequate training of in-house staff was essential to providing good client service.

Summary of Informant Suggestions

Informants suggested that, in order to better support the staff's commitment to good client service, a need existed for more regular and in-depth training of in-house staff particularly with respect to fundamental subject matters such as settlement negotiation, interviewing skills, child abuse, and cultural sensitivity. As well, it was proposed that the Office ensure that its professional staff take advantage of external continuing education programs.

Analysis of Informant Suggestions

Thorough training is an essential prerequisite to good legal representation of children. Without such training, effective communication with clients could be jeopardized and other important components of good service delivery, for example, settlement negotiation affected. Moreover, it is important to note that in-house legal staff are primarily responsible for the training of panel lawyers. Concerns have been expressed about the expertise of in-house counsel to provide training with respect to those areas in which they have only received minimal training.

The obvious difficulty that the Office faces in this regard is lack of funds. As noted, its ODOE budget has been seriously affected by recent cost constraint exercises.

B. & C. Criteria to Establish Well-Being and Ensure Rights

Informant Views

Informants were asked to comment on the role the Office plays in empowering clients and in fostering their rights and well-being. Informants were of the view that the Office played a very important role in this regard.

As discussed earlier, the Office has prepared guidelines with respect to the role of OG counsel in representing children in custody/access and child protection cases. A number of these guidelines directly speak to empowering clients - for example, "advance the views of the child client", "place the child's position before the court", "keep the child client informed on the status of proceedings" and "ensure Part V rights [Child and Family Services Act] are reviewed with the child".

Notwithstanding these guidelines, however, concerns were expressed by informants, which were discussed in the section dealing with "Meeting the Needs of Clients", of this Part, that the role of OG counsel lacks clarity and has resulted in different roles being assumed by different counsel. It was noted that certain roles assumed by counsel were of a more paternalistic nature and less respectful of empowering children. For example, it would appear that a number of OG counsel feel that their primary role is to represent the "best interests" of children; that, although it is important to put the child's views before the court, they should not be strongly advanced if contrary to counsel's perception of the child's best interests.

It is interesting to note that a majority of informants were opposed to such a role for OG lawyers and felt that it was important for counsel to forcefully advocate the child's instructions. It was noted that, to do otherwise, diminished a child's right to legal representation.

Informants noted that an advocacy role did not preclude a lawyer from first exploring with the child the merits of their case, or the practicalities, and from suggesting, where appropriate, other options: such a role is consistent with a traditional lawyer/client relationship and is part of a lawyer's responsibility to protect their client's interests.

Informants were also of the view that a child's ability to instruct counsel should be construed as broadly as possible. It was suggested that the legislation governing personal rights disputes inferred a presumption in favour of a child's capacity to instruct by, for example, providing them with the right to legal representation (see CFSA, s.38) and by requiring the court to consider their "views and preferences" (see CFSA, s.37; CLRA, s.24). Many informants proposed that, in order to ensure to the greatest extent possible that a child's voice will be heard, there should be a formalized rebuttable presumption of capacity linked to a child's ability to communicate, rather than, for example, to some predetermined age.

It was suggested that even very young children can form opinions and express a preference. In order to elicit those views, informants stressed the importance of counsel being properly trained: if counsel do not have the necessary skills to communicate with children and to communicate with different types of children - whether very young

children, children of different cultures, or abused children - the likelihood increases that children will be considered as being either incapable or unable to instruct. Informants noted that this result did little to empower children.

Empowering children also includes respecting their wishes that their preferences not be disclosed or advocated. In such cases, as well as those where the child is too young or otherwise unable to instruct counsel, informants suggested that it was important for the Office to clarify the role of OG counsel. As noted in the earlier section dealing with "Meeting the Needs of Clients", informants were divided concerning what that role should be - whether to represent the "best interests" of the child or to serve as a more neutral participant, as a friend of the court, by ensuring that accurate and complete information was before the court.

A number of informants were also of the view that the OG should give further consideration to the role of children in the courtroom. A number of informants noted that, over the past few years, they had changed their minds with respect to children testifying in court proceedings and currently were of the view that, provided certain accommodations were made, such participation should not be discouraged and would go a long way to empowering children. In this regard, informants referred to the Ontario Law Reform Commission's Report on Children's Evidence (1991) which recommends a number of ways in which children's evidence can be accommodated - for example, by the use of such devices as video tapes, giving evidence behind a screen or in an adjacent room by means of closed circuit television.

Summary of Informant Suggestions

With respect to ensuring that a client's well-being and rights are respected to the greatest extent possible, the following suggestions were made:

- that the role of OG personal rights lawyers should be clarified to ensure that it empowers clients; in this regard, where a child is able and willing to instruct counsel, the role should be to advocate the child's instructions notwithstanding that they may be contrary to best interests; where a child is unable or unwilling to instruct, the Office should give further consideration to what the most appropriate role should be from the perspective of empowering the client;
- that clients should always be apprised of an OG lawyer's role;
- that OG lawyers should be well trained in communicating with children in order to increase the likelihood that a child's preference will be advanced;
- that further consideration should be given by the Office to the role of children in the courtroom.

Analysis of Informant Suggestions

There has been a trend over the past two decades to give greater recognition to children's rights - to the right to legal representation and to the right to influence matters that have a significant impact on their lives. Traditionally, the courts were satisfied that children's interests would be adequately represented by adult parties. In more recent years, however, children have been increasingly recognized as individual persons with views, preferences and interests distinct from their parents, child protection agencies or other guardians. There has been a movement towards ensuring that those views, preferences and interests are advanced.

For example, Article 12 of the UN Convention on the Rights of the Child provides that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child ..." and that "for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative ..." Other statutes, such as the Children's Law Reform Act and the Child and Family Services Act require that the court consider the child's views and wishes, if they can be reasonably ascertained.

The nature of the informant suggestions, set out above, acknowledges this current trend, and recognizes that children are people and that the principles of natural justice require that, whenever important decisions are being made about someone's life and well-being, they should be able to have their views heard. Moreover, the informant suggestions reflect the position that it is the judge's role, rather than the lawyer's, to decide what is in a child's best interests and that such a decision cannot fairly be made without ensuring that a child's voice is heard.

It is interesting to note that consideration has recently been given to moving away from the traditional concepts of "custody", "access", and the "best interests test" to more innovative concepts for resolving disputes between parents, such as that of "shared parenting". The Federal/Provincial/Territorial Family Law Committee has undertaken a project to review the present legal regime in this regard and a public discussion paper (March, 1993) was recently released. It has been noted by academics and others that the best interests test is vague and unpredictable and results in decision-makers drawing on their own biases, beliefs and values in determining what is in a child's best interests. A number of jurisdictions, for example, Washington State (see the Parenting Act, Wash.L.1987, c.460 and the Domestic Relations Code, 26.09, 181-220), have reformed their laws in this regard to provide for "permanent parenting plans" whereby parents are encouraged to enter into agreements that address different areas of parental responsibility such as "residential arrangements", "allocation of decision-making authority", (e.g. who has the responsibility for general day to day decision making, as well as for such special issues as education, religious training and health care), and "prohibitions" (e.g.

prohibiting a parent from doing certain specified matters with a child). To guide parents in preparing the plan, as well as the court should the matter proceed to litigation, the legislation includes certain presumptions with respect to what is in the best interests of a child - for example, that a young child should continue to have their primary residence with the parent who was the primary caregiver, that children should have frequent and predictable contact with both parents, subject to certain limitations, and that older children should be permitted to choose the parent with whom they will have a primary residence and determine the extent of their relationship with the other parent. Should the law evolve in this way in Ontario, the Office of the Official Guardian will be faced with new challenges with respect to the formulation of the appropriate role that OG counsel should play.

D. Criteria which Focus on the Community

Informant Views

Informants were of the view that the Office was very concerned about ensuring that a regular, ongoing liaison with stakeholders was maintained and that the program was accountable to the community. In this regard, the Official Guardian has adopted a number of measures, which were discussed in the section dealing with "Client Accountability", and will only be briefly noted.

The Office, for example, meets regularly with different groups of stakeholders, including the judiciary, the legal profession and community organizations and has set up a local Advisory Committee to address systemic issues relating to improving client service in the court system. Considerable outreach to aboriginal community organizations has also been undertaken by the Office to ensure that their views and advice are reflected in the delivery of service to aboriginal children. Liaison with other cultural organizations is also maintained. In addition, the Office is cognizant of different local community needs and attempts to address those special needs in its training programs for panel lawyers.

Informants were of the view that the Office was very accountable to its clients and the community, but suggested that additional measures might be taken in order to safeguard the accountability of the Office.

Summary of Informant Suggestions

In order to ensure ongoing community involvement with the Office of the Official Guardian, it was proposed (as discussed in the section dealing with "Client Accountability") that a multidisciplinary and regionally representative Advisory Committee be created which would meet regularly to discuss issues of concern, help set standards and guidelines and make recommendations to improve service delivery. It was suggested that this Committee should be broadly representative of community interests

and different stakeholder groups and include, for example, membership from the judiciary, Bar, CAS, parent's groups, panel lawyers, native and other ethnic communities, as well as children's experts and children themselves.

Analysis of Informant Suggestions

The creation of a broadly-based Advisory Committee would go a long way to ensuring that the Office is responsive to and representative of local community interests and needs. It is clear that a genuine effort to involve the community that has a direct interest in the client population leads to better and more accountable client service.

E. Positioning the Program on a Continuum of Supports

Informant Views

With respect to the Official Guardian's Office, it is important to understand that the legal services provided are generally considered to be services of "last resort". For example, as noted earlier, the Rules of Civil Procedure require that the OG act as litigation guardian for a minor only where there is no other person willing and able to act (Rule 7.04). With respect to child protection cases, the legislation speaks in terms of a general right to representation without specific reference to the OG (see Child and Family Services Act, s.38); other counsel, for example, community clinic lawyers at "Justice for Children" also represent children in these proceedings (although only in Toronto and where the child can provide instructions). There are, however, exceptions to this role of legal counsel of last resort. For example, with respect to legal representation of children admitted on an emergency basis to secure treatment facilities, the OG appears to play more of a "first resort" role: s.124(8) of the Child and Family Services Act provides that the "Official Guardian shall represent the child ... unless the Official Guardian is satisfied that another person will provide legal representation for the child ..."

Notwithstanding that the OG is considered to be a service provider of "last resort" in most cases, it is important to note that often the Office is the "only resort" or the "better resort" for the services it provides. For example, with respect to OG Reports, an alternative is for the parties to obtain a private assessment by a mental health professional pursuant to s.30 of the Children's Law Reform Act. This alternative, however, may not be a realistic one for many parties because of the expense involved, lack of availability of the service in their community, or the length of time they would have to wait for the service. Further, such assessments are often not considered to be the "better" service from the perspective of the client; as discussed earlier, a number of informants were of the view that this type of report was not as child-focused as OG Reports and tended to polarize the parties.

Similarly, alternatives to OG legal representation of children may not be the "better" service. One of the questions asked informants was whether non-Official Guardian lawyers could deliver this service as effectively. While one informant was of the view that such services could be provided adequately by the private Bar in the absence of the Office of the Official Guardian, others were of the view that the services provided by the Office would clearly be superior. This issue will be considered in more detail in Section VIII of the Report dealing with Architectural Options (see "Privatization").

Another question asked informants concerned their view of the leadership role that should be played by the OG - for example, whether the Office should take on a more active role in policy development, systemic advocacy or in providing more public education on children's legal issues generally. A number of informants were of the view that this would be an appropriate and valuable role for the OG to assume, but questioned whether the current budget and caseload of the Office would necessarily preclude increased activities in this regard.

Summary of Informant Suggestions

With respect to the proper positioning of the OG on a continuum of supports, it was proposed that the OG consider assuming more of a leadership role with respect to policy development, systemic advocacy activities and public education relating to children's interests. Pursuant to this suggestion, the OG would serve, as one informant described it, as an "Ombudsman" for children.

In this regard, the Office would be more proactive in addressing children's issues, in bringing them to the public's attention and in lobbying for their reform. It was suggested, for example, that the Office could involve itself in test cases concerning issues of general importance to children and publish discussion papers and public education materials on significant legal issues relating to children. Other policy development activities suggested included a consideration of the legal status of children in all relevant legislation and a review of the requirement in certain cases that minors, notwithstanding their age, have a litigation guardian as opposed to being able to instruct counsel on their own.

Analysis of Informant Suggestions

In considering the above informant suggestions, it is important to note that the Office currently participates in policy development and systemic advocacy activities in many cases, although it does so quietly and within the system without attracting public attention. For example, the Office has served on numerous committees, both within and outside government, which have been set up to consider children's issues. Issues on which the Office has had direct input include child abuse, children's resource problems, supervised access, case management and issues involving Aboriginal adolescents.

It was noted that it is often difficult for the Office to effectively advance certain policy issues because of its position within government and the Ministry. It was suggested that the Office's efforts in this regard might be more effective if it were situated within a special Division of the Ministry with the appropriate focus and supports to assist the Office in these activities.

For the Office to become more involved in policy development and public education relating to children's issues would have significant cost implications. Further, it has been questioned whether this is a proper role for the Office to assume; it was suggested that there are other departments and agencies of government, as well as outside agencies, to whom this role more properly falls, such as different ministry policy development divisions, the Office of Child and Family Service Advocacy, Justice for Children, the Institute for the Prevention of Child Abuse, and the Ontario Law Reform Commission.

F. Criteria for Cost-Constraint and Administrative Simplicity

Informant Views

While the Office of the Official Guardian is subject to the same general cost constraints affecting all Divisions and programs within the Ministry, it is faced with an additional challenge - that of bringing its expenditures on the personal rights side of the Office back in line with its current budget. In 1992-93, the "open ended entitlement" of the OG's budget for the delivery of services, allocated at \$5.8 million, was overspent by approximately \$3 million. This occurred as a result of panel lawyers being asked by the Office to submit their accounts for work performed as of November 30, 1992.

In response to this problem, a Strategic Review of the delivery of personal rights legal services was implemented and a Committee of representatives of the Bench, Bar and Ministry struck to review cost saving strategies. The Committee's mandate includes a review of:

- the nature and level of the personal rights delivery of services on behalf of children including the quality and timeliness of delivery; and
- the jurisdiction and role of the Official Guardian in personal rights proceedings in the administration of justice.

It is anticipated that a final report will be completed by the end of June, 1993.

Other cost constraints faced by the Office have resulted in significant cut-backs to the ODOE line of its budget and, as discussed previously, have had the effect of significantly curtailing staff development and training. Other challenges facing the Office in this

current economic climate include pressure from its agent and panel lawyers and social workers to increase the current tariff.

As noted, outside OG lawyers are paid a flat rate of \$71 per hour notwithstanding their years of experience. This is in contrast to rates paid to legal aid lawyers who can earn up to \$84 per hour after ten years of experience. Many of the panel lawyers are senior lawyers in their communities.

Agent social workers receive \$30 per hour which, as discussed earlier, is widely considered to be inadequate. By comparison, the same agent social worker who is retained through legal aid to prepare an assessment under s.30 of the Children's Law Reform Act will be paid either \$50 per hour and \$60 per hour depending upon whether they have a BSW or a MSW (although there are limits on the number of hours that can be billed).

Further, informants were of the view that OG professional staff carry a very heavy workload and that more staff should be hired. It was suggested that the high quality of service provided by in-house professional staff, in the face of an onerous caseload, could be directly attributed to their strong commitment to the service they were providing and to long hours of work.

Taking into account these competing pressures and the need to deliver services in a cost-effective, yet client-focused way, informants had a number of suggestions with respect to cost constraint initiatives. These are summarized below.

Summary of Informant Suggestions

The following cost constraint proposals were suggested by informants:

i) Cost Constraint Options relating to Personal Rights Cases

a. Charge for OG Reports

It was proposed that a fee of \$500 be charged (\$250 per party) provided the parties could afford to pay. A simple means test, perhaps based on income, should be implemented.

b. Custody/Access Representation - OG Discretion and Better Monitoring

Pursuant to this reform option, the Courts of Justice Act would be amended to provide the OG with total discretion, which should be based on client need, with respect to appropriate custody/access cases to take on. In addition, to ensure better monitoring of panel lawyers' involvement in cases:

- the number of panel lawyers should be reduced; this could be achieved by offering lawyers a higher hourly rate, perhaps comparable to legal aid rates, to assume more OG cases;
- panel lawyers would be required to report to the Office at significant stages in the custody/access case concerning the ongoing value of their involvement to the client, which would be carefully assessed.

c. Child Protection Representation - OG Discretion and Better Monitoring

Pursuant to this reform option, the Child and Family Services Act would be amended to provide the OG with final decision whether a child protection case would be taken on after the court has identified the potential need for child representation. In addition, as discussed above:

- the number of panel lawyers would be reduced; and
- panel lawyers would be required to report to the Office at significant stages in the child protection case concerning the ongoing value of their involvement to the client, which would be carefully assessed.

ii) Cost Constraint Options relating to Property Rights Cases

a. Focus Mandate so truly "Last Resort" and of Benefit to Client

Pursuant to this option, an analysis of the statutory law governing the OG's role in property rights cases would be undertaken and statutory amendments implemented to ensure that the OG acts on a truly "last resort" basis and only where the service would be of benefit to the client. In this regard, informants suggested that the following amendments be considered:

- Rule 7.04 (Rules of Civil Procedure)

Rule 7.04 provides that "unless there is some other person willing and able to act as litigation guardian", the court shall appoint the OG to represent minors. It was proposed that the word "willing" should be removed from this test, with the effect that the OG would be required to act only when someone else was "unable". Such situations could arise, for example: where there is a conflict of interest between the child and their parent - such as a motor vehicle accident involving the child where the parent was the driver; where the parent is emotionally disturbed and it is clear they are not able to look after the needs of their child; where the child has been removed from the home and it is not feasible that the parent represent their

interests; or where the parents are financially unable to retain the services of a lawyer for their child. As a result, parents or the child's guardian could not refuse to obtain legal services for a child simply because they were "unwilling" to do so and preferred that the OG provide the service for free.

- Rule 7.03(2) (Rules of Civil Procedure)

Rule 7.03(2) provides that where a proceeding has been brought against a minor in an estates or trust matter, "the Official Guardian shall act as the litigation guardian" unless the court orders otherwise. Informants expressed concern that the mandatory language of the Rule could be relied on by the court to require an OG lawyer to act in cases where it was unnecessary for them to do so. For example, it was noted that situations arise where the interest of the minor in such cases is the same as that of another party and it is redundant for the OG to act.

- Estates Act

Subsection 49(6) of the Estates Act has been interpreted by the courts as requiring OG involvement in a proceeding dealing with the passing of accounts. In such cases, where a trustee or an executor is required to account to the court with respect to the administration of the trust or estate, there are often other interests represented that are the same as the child's which makes the OG's role of limited value.

b. Avoid Duplication of Service Delivery with PT's Office

Informants suggested that consideration be given to clarifying and rationalizing the Rules of Civil Procedure and the Estates Act (and its Rules) as they relate to legal representation of persons under a legal disability in passing of accounts proceedings to avoid a potential duplication of service delivery between the OG and PT. There is a conflict between the Rules of Civil Procedure (which require service of documents on the PT where a person is mentally incompetent or incapable of managing their affairs not so declared or an absentee) and the Estates Act and its Rules (which require the OG to represent minors, mentally incompetent persons, persons declared incapable of managing their affairs and absentees). This conflict has been addressed by an informal protocol between the two Offices which makes the PT responsible for the interests of absentees and the OG responsible for the interests of all mentally incompetent persons not so declared and persons incapable of managing their affairs.

The Offices have also entered into another protocol which ensures that where the interests represented by each Office are basically the same, only one lawyer will appear in court and represent the clients of both Offices. Informants were of the view that this protocol should be more formalized if possible.

iii) General Cost Constraint Options

a. Achieving Economies of Scale

Other cost constraint options proposed included amalgamation with the Public Trustee's Office, or situating the Office of the Official Guardian and other social justice services in a common Division within the Ministry with the resulting opportunity to share certain common administrative and support services. [Note: these reform options are discussed in Section VIII, Architectural Options].

Analysis of Reform Options

While these informant suggestions and other reform options will be analyzed in greater detail in the Report resulting out of the OG's Strategic Review, the following comments are offered. Informants were of the view that, if properly implemented, the above suggestions would not jeopardize the quality of service delivery to clients and would result in cost savings to the Office.

For example, charging for OG Reports could potentially provide a \$500,000 annual recovery to the Office (\$500 x 1,000 reports on average per year), although it is unlikely that all parties would be able to afford this expense. Informants did not feel that it would be necessary to implement an elaborate administrative structure to conduct a means test in this regard and felt that the test could be based on a simple financial threshold (e.g. income) and expeditiously administered by current staff. (It was noted that financial information concerning the parties would be readily available from their financial statements.)

Other informant suggestions noted above largely concern giving the OG greater discretion to decide which cases the Office should become involved in. Informants were of the view that OG involvement was not needed in every case and that there were certain cases, or stages within certain cases, where the role played by the OG would not be meaningful or of benefit to clients. The proposals would ensure that the involvement of the OG is closely scrutinized from the perspective of client need to avoid delivering unnecessary and costly services.

The Office of the Official Guardian attempts to do this to the greatest extent possible and has, for example, established guidelines for the screening of custody/access cases. Nonetheless, with the exception of OG Reports, final discretion whether to take on a case

lies outside of its mandate. As mentioned earlier, the Office also tries to avoid acting in cases where their client's interests are being adequately represented by another party and has entered into a protocol with the PT to avoid the duplication of services. Nonetheless, the OG has no firm statutory basis on which to extricate itself from cases where its role is redundant.

Informants warned against cost constraint measures that could have the unwanted effects of jeopardizing client service and proving more costly to government in the end result. It was suggested that it was important to spend a little to potentially save a lot. In this regard, informants were of the view that monies allocated to the training of OG professional staff should be increased and the fees paid to outside professional staff raised in order to help ensure that the OG continues to attract and retain highly skilled professionals. Well trained, competent professionals are the Office's best guarantee that clients will be afforded a high quality of service, and that unnecessary costs, for example, associated with increased supervision of staff or litigation that could have been settled, will not be incurred.

RECOMMENDATIONS

MEETING THE NEEDS OF CLIENTS AND RESPECTING A CLIENT'S WELL-BEING AND RIGHTS

Recommendations

In order to ensure that the Office adequately meets the needs of clients and is respectful of clients' well-being and rights, it is recommended that:

1. the Office clarify both the general and evidentiary roles of OG personal rights lawyers by producing a clear and detailed policy statement;
2. in clarifying the role, the Office should ensure that it empowers clients to the greatest extent possible and, in this regard, counsel should be required to advocate a child's instructions notwithstanding that they may be contrary to best interests;
3. the Office ensure that the role of personal rights lawyers is clearly understood by OG lawyers and students, the Bench, Bar, and, very importantly, clients;
4. the Office monitor whether personal rights lawyers are adhering to Head Office policy with respect to role;
5. the Office ensure its lawyers are well trained in communicating with children in order to increase the likelihood that a child's preferences will be advanced;

6. the Office give further consideration to the role of children testifying in the courtroom.

Discussion of Recommendations

The role that an OG personal rights lawyer plays in representing a child client goes to the very heart of service delivery and, depending upon that role, may or may not meet the needs of clients or foster their rights and well-being. Considerable concern was expressed by informants with respect to this issue. As noted earlier, the current guidelines prepared by the Office have been subject to various interpretations; as a result, clients are being represented by lawyers in different ways.

Adopting the recommendations would result in a clarification of this role, and would clarify it in a way that empowers clients to the greatest extent possible. Empowering clients involves ensuring that their views and preferences are advanced and the opportunity provided for them to personally advance those views and preferences in the courtroom.

ACCESSIBILITY

Recommendations

It is recommended that the following initiatives be undertaken by the Office to improve accessibility:

7. preparation and broad dissemination of plain language public education materials directed at specific audiences and age groups;
8. increase outreach activities particularly in regional areas;
9. consider the implementation of a special toll-free information line which would provide the caller with pre-recorded general information about the service, with referral to a live person if required [Note: this service could be provided for the Office and other social justice programs in the context of a Community Operations Division];
10. provide professional staff with voice mail;
11. create a comfortable interview space with couches and chairs for the older child client;

12. change the name of the Office to, for example, "Official Children's Lawyer" or "Office of Child Representation", to better reflect the nature of the service provided;
13. give consideration to refocusing the mandate of the Office to providing services only to children (and perhaps unborn and unascertained beneficiaries in estates matters); in this regard, other clients of the Office including mentally incompetent persons not-so-found, psychiatric patients and absentees would become the exclusive responsibility of the PT.

Discussion of Recommendations

All of the above recommendations would enhance accessibility to the Office and address shortcomings in this regard identified by informants. As discussed, the Office is not particularly well known to the public and there is a paucity of public education materials available; at the present time, there are no brochures or pamphlets devoted specifically to the services provided by the Office and there is only a brief reference to the Office in a booklet prepared by the Communications Branch which includes general information for children about custody and access proceedings.

While the Office is very proactive with respect to certain outreach activities, such as public speaking engagements and liaising with different community organizations, more should be done. It is suggested that the concern that increased public education will invite business that cannot be handled by the Office should be addressed in ways other than isolating the Office from the public. Good public education involves apprising the community about services that the Office will and will not provide and when such services are appropriate.

Focusing the mandate of the Office exclusively on its primary client group, children, and renaming the Office to reflect this focused mandate would also assist the public in accessing the service.

ACCOUNTABILITY TO CLIENTS AND THE COMMUNITY

Recommendations

In order to ensure the continuing accountability of the Office of the Official Guardian to both its clients and the community, it is recommended that:

14. a multidisciplinary and regionally representative Advisory Committee be created which would meet regularly to discuss issues of concern, help set standards and guidelines, and make recommendations to improve service delivery; the Committee

should be broadly representative of community interests and different stakeholder groups and include, for example, membership from the judiciary, Bar, CAS, parent's groups, panel lawyers, native and other ethnic communities, as well as children's experts and children themselves;

15. the Office should more widely publicize its formal complaints procedure;
16. the Office should seek more regular input from clients and other stakeholders with request to the quality of service that it provides, for example, through the use of suggestion boxes, client focus groups, surveys and questionnaires.

Discussion of Recommendations

While informants were impressed with the current level of accountability of the Office, they felt that it was important to have safeguards (and benchmarks) in place to ensure its continuing accountability. These recommendations would ensure a higher level of ongoing accountability to clients, stakeholders, and local community interests.

The OG has noted that "it is difficult to measure objectively the quality of legal services provided to children" because "satisfying the wishes of the child and determining the best interests of the child are factors which are difficult to quantify" (see Briefing Paper for Strategic Review (April 22, 1993) at 42). While this is true, regular ongoing feedback from directly affected or interested parties would assist the Office in this regard and help identify weaknesses in the delivery of services that require attention.

RELIABILITY

The following recommendations are offered with respect to improving the reliability of the services provided by panel lawyers, agent property rights lawyers, agent social workers, and articling students.

a) Panel Lawyers (Custody/Access and Child Protection Cases)

Recommendations

It is recommended that:

17. consideration be given to modifying the training provided to panel lawyers in the ways suggested by informants, which could include, for example:
 - longer training sessions associated with empanelment or annual training;

- more and regular training on certain fundamental subject matters such as interview skills, the different developmental stages of children, mediation/settlement training, sensitivity training with respect to cultural and racial differences and child abuse;
 - focusing training more on the problems/uniqueness of different regions and seek more input in that regard;
 - self-training by panel lawyers, whereby senior panel lawyers from each region could be selected to attend regular intensive training programs in Toronto and then be responsible for training the panel lawyers in his/her region;
18. the standards and guidelines relating to panel lawyers be fleshed out to provide clearer direction and that the Office ensure that panel lawyers are aware of and follow these standards and guidelines;
19. there be increased monitoring of the performance of panel lawyers, which could be facilitated, for example,
- reducing the number of panel lawyers;
 - requiring panel lawyers to report to the Office more frequently, perhaps at each significant stage of a case;
 - more widely publicizing the Office's complaints procedure as part of a public education exercise.

Discussion of Recommendations

In order to ensure that child representation is of the highest possible quality and consistently delivered throughout the province, it is important to ensure that panel lawyers are thoroughly trained, that they are aware of and adhere to Head Office policy and that their performance is regularly monitored. As discussed earlier, child representation is a specialized area of practice which requires regular and ongoing training. It is an area of practice that is constantly evolving - there are regular innovations in techniques and skills relating to dealing with children, and new legal and clinical issues are constantly arising.

It is important that the Office and its lawyers keep abreast of these developments. As discussed, it is the training and specialized expertise of these counsel that distinguishes them from other members of the private Bar; it is this training and expertise that enables them to effectively communicate with children and all types

of children. It is recommended that this specialization should be fostered, notwithstanding the additional costs that may be involved. The rewards of highly skilled and well monitored professionals are many: expeditions and effective resolution of disputes; support to children during a particularly stressful time in their lives; and the recognition and furthering of the right of vulnerable persons to have a meaningful voice in important decisions that affect them.

b) Panel Lawyers (Secure/Treatment Cases)

Recommendations

It is recommended that:

20. consideration be given to retaining the services of independent psychiatrists to assist OG counsel in appropriate secure treatment cases.

Discussion of Recommendations

As discussed, informants were of the view that service to child clients who have been admitted to secure treatment facilities could be improved upon if OG counsel were able to regularly retain the services of an independent psychiatrist. It was noted that it is difficult for OG lawyers, to determine whether certain criteria for the admission of a child to such facilities have been met - for example, whether the child is suffering from a "mental disorder". The intervention of an independent psychiatrist in these cases could assist counsel both in advising their clients whether to contest an admission and in effectively advocating on their behalf before the courts or the Child and Family Services Review Board.

c) Agent Lawyers - Property Rights Cases

Recommendations

21. agent lawyers should be required to formally apply to the Office to serve as OG lawyers every two years, but that no formal training associated with empanelment be provided by the Office; rather, agent lawyers would be required to take continuing legal education courses on relevant subject matters in order to continue on the panel;
22. rather than providing formal training programs, consideration be given to holding annual (or biannual) meetings of agent lawyers to discuss mutual issues of concern and new developments in the law as they relate to children;

23. guidelines and standards should be prepared by the Office which would provide agent lawyers with guidance on such issues as the nature of their role, interviewing the client, and reporting to the Office;
24. there be increased monitoring of the performance of agent lawyers which could be facilitated by requiring them to report to the Office at significant stages in a proceeding; such monitoring would assist the Office to evaluate performance and monitor costs.

Discussion of Recommendations

At present, there is no comparable empanelment or training of property rights agent lawyers as there is for personal rights lawyers. It is important to note, however, that the nature of these lawyers' work is quite different: much of the legal work is handled centrally by in-house counsel and property rights agents are heavily instructed. Moreover, by virtue of their predominant role as litigation guardian and the types of cases they handle, agent lawyers normally do not meet with child clients; the nature of their expertise lies more in the skills and knowledge associated with being, for example, a good personal injury lawyer or estates and trusts lawyer than with being an experienced "child advocate".

Accordingly, it is not recommended that property rights agent lawyers be subject to as formal an empanelment process as personal rights lawyers. It is proposed that they be required to apply to the Office as a prerequisite to serving on the panel so that their legal experience can be carefully scrutinized. Rather than the Office providing intensive training for these lawyers, it is suggested that they be required to attend appropriate continuing legal education programs in order to provide the Office with some assurance that their skills and legal knowledge are current. It is further suggested that the Office consider organizing annual or biannual meetings of property rights counsel to discuss mutual issues of concern; this would also foster a more personal relationship between Office and its outside staff.

d) Agent Social Workers

Recommendations

It is recommended that:

25. agent social workers should be empanelled and trained in the same way as personal rights lawyers;

26. a standards manual be prepared which would address such matters as preparing OG Reports and include interviewing guidelines;
27. formal yearly performance appraisals be implemented;
28. the Office continue to review OG Reports;
29. social work assists be made more widely available to panel lawyers;
30. the current tariff be increased.

Discussion of Recommendations

These recommendations are designed to ensure that the OG will be assured of high quality social work in the field and an ongoing commitment of its agents to the work of the Office. Agent social worker informants were of the view that a need existed for training, formalized standards and guidelines and a closer relationship with the Office and other agent social workers. They welcomed the proposal that regular performance appraisals be conducted.

As discussed, the benefits associated with well trained and adequately compensated professional staff are many: effective and responsive client service; a stable and reliable workforce; and a timely and equitable resolution of disputes with attendant cost savings to the government.

e) Articling Students

Recommendations

It is recommended that:

31. articling students continue to be assigned custody/access cases and child protection cases and represent children in court;
32. the students receive more intensive training at the beginning of their articles and that their performance be carefully monitored; in this regard, it is suggested that:
 - students receive a full month of practically oriented, intensive training during which they would not interview clients or appear in court;

- during this month period, students would receive exposure to their different responsibilities and orientation with respect to fundamental subject matters, such as interviewing children and others, mediation/settlement negotiation, trial preparation and advocacy skills, race relations and cultural sensitivity awareness;
- students receive ongoing training throughout the year on less fundamental subject matters;
- students be closely supervised and meet regularly with their principals, team lawyers and the articling committee;
- students' caseloads should be carefully monitored to ensure that they are manageable and evenly distributed, and that the cases assigned are not unduly complex.

Discussion of Recommendations

While some judges were not supportive of articling students carrying their own caseload, a majority of informants were in favour of this practice continuing provided that the shortcomings identified with the current system were addressed. As discussed, these shortcomings related primarily to ensuring students were properly trained prior to providing direct client service, such as interviewing clients, negotiating settlement of cases or representing clients in court.

The rationale for students continuing to represent clients was fully canvassed in this section and will only be reviewed briefly. Affording students this opportunity not only benefits them in terms of valuable hands-on experience, but benefits the Office as well in terms of providing cost-effective legal representation and a pool of experienced candidates for future counsel positions.

RESPECTFULNESS

Recommendations

In order to ensure that the Office is as respectful as possible of client differences, it is recommended that:

33. more in-depth training with respect to race relations, cultural sensitivity, child abuse and child development be provided to appropriate OG staff, including fee-for-service outside professional staff;

34. the Office continue its efforts to ensure that in-house professional staff and outside, fee-for-service professional staff are equitably representative of different visible minorities and cultures.

Discussion of Recommendations

While it is important to acknowledge that the Office has done much to ensure that it is as respectful as possible of client differences, it is an area that requires considerable training and ongoing attention. In order to understand cultural differences and how they affect personal interaction necessitates regular liaison with different cultural communities and organizations. The Office of the Official Guardian has taken an important first step in this regard and is aware of the work that needs to be done.

As discussed earlier, if OG professional staff are not aware of, for example, the significance of certain body language in dealing with clients of different cultures, or that it is disrespectful to ask certain questions or to ask them in a certain way, or that it might take longer to develop a trusting relationship with an abused child or a child from a particular ethnic background, they run the risk of not being able to communicate with their clients and effectively advocate their views and preferences.

TIMELINESS

Recommendations

In order to ensure the timeliness of client service, it is recommended that:

35. the Office closely monitor its intake and case selection process with respect to custody/access representation and OG Reports to ensure that client service is as timely as possible;
36. the capacity of the current Management Information System be augmented so that meaningful statistics can be kept on, inter alia, the length of time taken to screen cases, assign cases, and, resolve cases;
37. the feasibility of creating a computer link with the Accountant's Office with respect to minors' accounts be considered, as well as the feasibility of providing for the electronic transfer of funds to minors.

Discussion of Recommendations

Timeliness of client service is very important when children are involved and particularly when the delay has a direct impact on a child's well-being and security. A quick and equitable resolution of a dispute involving children must be regarded as a high priority of client service.

While Official Guardian staff are keenly aware of the effects of protracted litigation on their clients and very successfully focus their efforts on a timely resolution of disputes, it would be helpful if the Office was able to better monitor its effectiveness in providing timely service. The Office has noted that its current Management Information System is not sophisticated enough to provide meaningful statistics on case management and it is recommended that this be addressed. Without being able to keep statistical information, the Office is unable to properly gauge whether its service is timely or to set benchmarks to ensure its ongoing effectiveness in this regard.

CLIENT-FOCUSED ORGANIZATION

Recommendations

In order to better support the staff's commitment to good client service, it is recommended that:

38. the Office provide more regular and in-depth training of in-house staff particularly with respect to such fundamental subject matters as settlement negotiation, interviewing skills, child abuse and cultural sensitivity;
39. the Office ensure that its professional staff take advantage of relevant external continuing education programs.

Discussion of Recommendations

The Office is currently very supportive of its staff and their commitment to provide the best service they can. In this regard, however, in-house staff have expressed the need for more formal and in-depth training, particularly with respect to those areas of expertise that are fundamental to the delivery of their particular service. It is important that the Office support this need. Such training is particularly necessary in view of the fact that in-house staff, for example, personal rights lawyers and social workers, act as trainers for the panel lawyers. Moreover, as noted earlier, dealing with children is a specialized area which requires regular ongoing training and education to ensure that a child's interests will be adequately represented.

COST-CONSTRAINT

Recommendations

In order to ensure that the services of the Official Guardian are both cost-effective and responsive to client needs, it is recommended that;

40. additional cut-backs to the budget of the Office should not be made;
41. serious consideration should be given to increasing the current tariffs governing fees paid to outside professional staff, including both lawyers and social workers, and that, at a minimum, the tariffs should be made consistent with comparable legal aid tariffs;
42. consideration be given to cost recovery initiatives such as charging fees for OG Reports (e.g. \$500), where the parties can afford to pay, and that a simple means test be implemented;
43. in order to control costs, consideration be given to providing the OG with final discretion whether to take on custody/access cases and child protection cases, such discretion to be based on client need;
44. in order to control costs, the OG should more effectively monitor the ongoing involvement of counsel in custody/access cases and child protection cases and assess at each significant stage in a case whether such involvement continues to be of benefit to the client;
45. in order to control costs, an analysis of the statutory law governing the OG's role in property rights cases be undertaken and statutory amendments considered that would ensure the involvement of the OG on a truly "last resort" basis and only where the service would be of benefit to the client (see informant suggestions in this regard)
46. the OG continue to monitor cases where a duplication of service delivery with the PT could arise and consider ways to formalize the current protocol between the two Offices and rationalize legislative inconsistencies.

Discussion of Recommendations

While detailed reform options concerning cost constraint initiatives relating to the delivery of personal rights legal services will be fully canvassed in the Report arising out of the OG's Strategic Review, it is hoped that the above recommendations will be of some guidance. As noted, informants were of the view that these recommendations, if properly

implemented, would not have a negative impact on service delivery to clients and, hopefully, would assist the Office in meeting its current budgetary challenge.

In considering these recommendations, it is important to note that informants strongly cautioned against cut-backs in the budget. They suggested that it may well be a false economy to attempt to save too much money in such areas as staff training and fees paid to contract professional staff. Informants were of the view that the purchase of the best service would also be the cheapest in the long run.

This view was attributed in part to the fact that, currently, the Office enjoys a 90% settlement rate in custody and access cases; as noted earlier, settlements are negotiated by both legal and social work staff in either the context of a child representation order or an order requesting the preparation of an OG Report. Any cost constraint measures that result in an erosion of this high settlement rate will have significant cost implications in terms of increased litigation of these disputes. The cost of one trial can easily equal the cost of many settlements; the cost to a child client cannot be measured.

F. THE OFFICE OF THE PUBLIC TRUSTEE

FINDINGS

General Observations

The Review Team found that the Office is unable to cope in a satisfactory way with its responsibilities to deliver services to the public. In part, this did not come as a surprise to the Team. The 1992 value for money report of the Provincial Auditor had been widely circulated. In the Report the Provincial Auditor noted a number of areas of concern. The Provincial Auditor concluded that the procedures established by the Office to administer trusts and estates were unsatisfactory.

In general, the Provincial Auditor found that :

- the Office had a heavy workload which left staff little time to attend to clients. By illustration it was noted that each of the trust administration teams was responsible for in excess of 1,200 client files which meant that at most each file could receive annually a couple of hours of attention. It was noted that the Close Out Section which is responsible for "closing out" a client's file because of the client's death or return to competence, had been processing approximately 1,800 accounts a year but at the time had a backlog of approximately 3,000 files. [This backlog problem has since been addressed.]

- clients' assets were often not completely or properly identified or collected. The Report cited a number of examples of where lack of control over the identification of clients' assets had resulted in losses to clients.
- clients' real estate properties were not being regularly inspected or maintained. Again, a number of examples were cited of where losses to clients resulted from the failure of the Office to inspect or maintain properties. [To address this problem, the Office is in the process of choosing, by public tender, a property management firm to provide property management services to clients.]
- clients' effects such as furniture, appliances and automobiles were disposed of for little or no proceeds. Again, a number of examples were cited of where losses to clients resulted from what in this case was perceived to be the inadequate supervision of auctioneers.

In addition, the Provincial Auditor found that there were a number of branch or section specific problems:

- monitoring of trust administration files was inadequate. Indeed it was noted that some files have not been looked at for many years. This failure had resulted in instances which the Provincial Auditor reported which had caused inconvenience or loss to clients. Further, it was noted that the trust administration section has never met most of its clients. The Report suggested that there was some doubt about whether the Office was ensuring that client needs were being met. It cited one example of where, for no apparent reason, the monthly allowance payment to a client was cut by more than half and the client then had to depend on others for even daily food.
- inadequate service was being provided to clients and heirs by the Close Out Section. The Report claimed that misplaced client files was a serious problem and that client service was seriously affected as a result. Also cited were examples of where client funds were never transferred by the section to clients. Further it was concluded that there was inadequate effort made to contact heirs, even when the heirs were known to the Office. [Subsequently, additional staff have been devoted to the close-out section to address the back-log.]
- finally, serious questions were raised about the lack of effort of the estates administration section to search for heirs. The Provincial Auditor suggested that the Office had a serious potential conflict of interest, given the fact that assets of an estate become payable to the province ten years after death, unless heirs are identified.

The Team was also aware of and reviewed the 1988 and 1990 Provincial Auditor reports, each of which included comments on the operations of the Office, as well as Ministry of Attorney General internal audit reports done in 1986 and 1989. The Team also reviewed a confidential special audit report prepared in response to an anonymous letter alleging a series of financial irregularities. Some of the comments made in these reports continue to be relevant.

For example, among other things the 1986 Report recommended that:

- resources be provided to acquire additional investigators to permit dual attendance at investigations. [Apparently a Treasury Board submission was made to seek the additional funding to implement this recommendation, but was not successful.]
- it was noted that with the exception of two sections, systems and procedure manual are non-existent.

For example, the 1988 Report had concluded the following:

- heavy workloads of trust officers had resulted in administrative errors and poor servicing of clients' files. The Report noted that the Public Trustee in 1987 had said in his annual report that the office was not providing an acceptable level of service.
- many estate files had not been discharged in an efficient and timely manner.
- the mandate of the Public Trustee for the supervision of charitable organizations was unclear. The Provincial Auditor recommended that the Public Trustee, in conjunction with the Ministry of the Attorney General, clarify the legislative mandate of the Office by defining the extent to which charitable organizations should be monitored and by whom.

The Review Team also reviewed a confidential report prepared by Peter Bartlett for the Social Policy Committee of the Ontario Division of Canadian Mental Health Association, which was published in 1986 in the University of Western Ontario Law Review in a slightly revised form, and without information regarding individuals interviewed. The Report, which was entitled "The Public Trustee and the Management of Estates of Clients Declared Financially Incompetent", concluded, among other things, as follows:

The Public Trustee is perceived uniformly as a bureaucracy. ... Lawyers and doctors tended to prefer to avoid the Office, finding it fraught with administrative diversions. Clients and their families both found the Public Trustee insensitive. In addition, clients in particular found the Public Trustee distant and unapproachable.... Clients frequently feel that they are begging to be allowed to

spend their own money, from an estates officer who is out of touch with the client's needs. Most clients find their lack of power over their own expenditures to be degrading.

The conclusion of Mr. Bartlett reported above was based in part on the following findings which were contained in the report:

- some families members of trust administration clients were frustrated with practices of the Office in the freezing of accounts, particularly joint accounts.
- while the Office practice was supposed to be that clients, next of kin and physicians were to be consulted prior to the disposition of property, there was evidence that sales of property, ranging from personal jewellery to houses, had taken place without consultation with the owner or the next of kin.
- there were indications that the Public Trustee had failed in a reasonable time period to address client requests from a reasonably competent client and her physician that property be sold.
- there were complaints about the delays and the "in limbo" status of new trust administration clients and clients who are discharged from a facility back into the community (for a period of three to six weeks these clients may without adequate funds for such things as food and accommodation).
- there were reports of unreasonable refusals to advance funds even when such expenditures would not encroach on capital.
- it was reported that the Office suffered from administrative problems, including repeated allegations that telephone calls of individuals and their families go unanswered.
- it was reported that inadequate investigation work is sometimes done and that inadequate work is done to confirm the character of local agents.
- the most universal complaint concerned that lack of periodic reports to clients. Most have no idea of how their money is being spent. The situation with reports is said to have been the clearest example of the powerlessness felt by clients and families. Telephone calls are often not returned. It was reported that frequently requests to the Office were given a more active response if they were routed through as lawyer, social worker or physician.

It is with this knowledge that others had identified issues and concerns with respect to the Office that this Review began its process of informant interviews. This is not to say that

the Team was predisposed to any particular finding. However, as more fully described below, the informant interview process, albeit limited and often anecdotal, seemed in a remarkable number of instances to simply reconfirm that many of the issues and concerns which had been identified by others continued to be problems for the Office.

The Review began shortly before the departure of the former Public Trustee. By that time, the Operational Review of Trust Administration was well underway.

A. Client-Focused Service Criteria

A1. Traditional Client Satisfaction Indicators

NEEDS MET

While external informants recognized the challenging responsibilities of the Office, most indicated that needs were not being met by the Office in a fully satisfactory way at this time.

Representatives of associations and facility administrators expressed grave concern with the delays associated with the PT in providing consent to non-emergency treatment in connection with mentally incompetent patients requiring medical or dental treatment in public hospitals. This function, like a number of other functions which the PT performs, are in the nature of last resort services. Currently, it takes three to six weeks before the Office is in a position to act. Most of the delay is directly related to the Office's perceived need to obtain a court order authorizing action and the need to collect information from care-givers to facilitate an informed decision. At the same time, to the credit of the Office, informant had nothing negative to say about actual decisions made. The role and administrative practice are being reviewed and regulatory changes are being considered which should reduce the frequency of delays.

For the most part, the PT is called upon to provide trust administration services, again as a last resort. The legislature has recognized that the statutory basis upon which the PT carries out his trust administration responsibilities needs reform. The shortcomings include the absence of statutory recognition for personal care powers of attorney, the archaic and expensive certification process under the Mental Incompetency Act which sometimes acts as a barrier to family choosing to seek appointment as committee of family members, the absence of any obligation to consult with the client in making decision or report regularly on the affairs of the client, the absence of any formal recognition of a role and interest of the family in the affairs of the client, the limited authority of the PT to investigate and address situations of abuse, the limited authority of the PT under the Public Trustee Act to delegate decision-making to other staff and it

lack of authority under existing law to assume a limited trusteeship mandate, as opposed to an all inclusive grant of authority. While all of these statutory shortcomings will, to some extent, be addressed by the forthcoming changes, the concern remains that the organization itself must become more client-focused.

The PT in the administration of crown estates is also a last resort service. The extent to which the PT is under either a statutory or common law duty to actively search for possible heirs of estates under administration has been raised as an issue. This uncertainty has resulted in bad will for the PT among members of the practicing Bar by reinforcing the commonly held misconception that if the PT gets control of one's affairs, the government will ultimately take one's assets. The complaints about service quality, much like those with respect to trust administration services, revolve around responsiveness and timeliness.

Finally, the charities function raises questions for external informants, particularly the private Bar and representatives of charities, about whether or not the PT has exceeded its mandate. One recurring example involved the role played by the Office in reviewing charity incorporation applications on behalf of the Ministry of Consumer and Commercial Relations. In addition to passing on whether or not the objects are charitable, the Office has crafted a number of mandatory provisions on matters including investment authority and directors' fees. In each issue, the PT has taken positions which have not been clearly settled by the courts. Another contentious issue is the ability of charities to sell annuities.

While Revenue Canada does not prohibit the sale of annuities, the PT does. Again, external informants suggest that in seeking to prevent abuse and improper action the PT has fashioned rules based on disputed jurisdiction which has ended up burdening the vast majority of compliant charities with unnecessary costs and impractical operating constraints.

ACCESSIBILITY

For some of the trust administration clients of the PT, particularly those living outside of an institutional setting, the single office location in downtown Toronto makes access to services difficult. Consensus exists among external informants interested in trust administration that the PT is not sufficiently accessible to clients outside of the greater Toronto area. The lack of a local presence contributes to an inability of the PT to interact both with clients and health care professionals and facility administrators. One representative of an association suggested that clients outside of Toronto are effectively discriminated against as a result of the single office location. Others suggested that the sole office location discourages many health care professional and facility administrators from turning to the PT, a point reinforced by internal informants as well. The geographic distribution of the trust administration clients would seem to add some credence to the point. As noted above, almost 50% of the trust administration clients are

resident in the greater Toronto area. Outside of Toronto, the majority of trust clients are concentrated in southern and south eastern Ontario.

Other program responsibilities may also be adversely affected by the sole office location, although not much on this issue was heard from informants. For example, staff are generally unable to visit patients before giving consent to medical or dental procedures. Likewise, the PT administers crown estates in the far reaches of the province from a single office location. However, the same concerns with the appropriateness of the location do not really exist for other areas of the office. Toronto is the logical location for an office which deals with charities and escheat corporations. This question of the sole office location will be addressed under the architectural options in Section VIII.

Informants said very little about the hours of operation of the PT. Since, for the most part we spoke to representatives, not the clients themselves, this may reflect a limitation of this review. It was suggested by a couple of association representatives that given the fact that many of the clients were in crisis, the office should see itself as more than a 9:00 a.m. to 5:00 p.m., five day a week operation. This point was made more strongly with respect to the new role and responsibilities which the office is to assume with respect to guardianship. Meetings at the offices of the PT on several Friday afternoons in the course of the review, found clients of trust administration clients waiting and expressing anxiety about resources for the week-end.

External informants suggested that the recent decision to eliminate the 1-800 toll free telephone number had resulted in diminished accessibility, particularly for clients of trusts administration outside of Toronto. One representative of an association pointed out that even though the PT apparently had a policy of accepting collect long distance calls from clients, the experience of some of the client members of the association was that the policy was not uniformly followed. There was also some concern expressed by the same representative about the need for the PT to accept long distance telephone charges from non-clients. Social workers, for example, may not have authority to make chargeable long distance calls from health care facilities which might assist their clients to contact the PT.

The convenience and design of the current offices are an issue. The offices were not established or designed to have any material access to clients. Located on the top three floors of a court administration building, access is either by way of stairs which is not convenient to some clients or by way of two elevators, which are slow and overworked. The general reception area is located on the sixth floor. There is no ability to engage in a private conversation with a staff member in the waiting area, as there are no client interview facilities. In general, the space is not designed to facilitate client service.

Limited information is available to clients and the general public regarding the PT and the services it provides. To the best of the knowledge of the Review Team, the PT has

published one brochure on trust administration services. In addition, the PT has participated in the preparation, with the Ministry of Consumer and Commercial Relations, of a manual on non-profit corporations, including charitable corporations. A further example of written material provided primarily to health care professionals and facility administrators was a package of explanatory materials and forms relating to the consent to treatment responsibilities of the PT. There may be other similar materials which were not brought to the attention of the Review Team.

Each of the documents is well written and generally very helpful. While there was no comment heard about the trust administration brochure, several members of the Bar had comments regarding the manual. There was some concern that the PT had not fairly represented the state of the law as it currently exists but rather had stated how the PT would like the law to be in some instances. Among the issues which the members of the private Bar considered contentious were the views of the PT with respect to directors' fees, the standard of care of the board with respect to investments and the rule with respect to annuities.

However, the more important issue is the adequacy of the amount of information generated, given the complexity of the PT's responsibilities, the nature and diversity of the clients and other interested parties, and, in the trust and crown estate areas, the role of the office as a last resort. While the Review Team has information from only a couple of other jurisdictions to compare, in each case the range and volume of the information available from the other offices points out the inadequacy of the PT's materials. For example, a package obtained from the office of the public trustee in the state of Queensland, Australia included close to 20 brochures and other user friendly materials. Virtually every informant stressed the importance of widely available, readable public information.

The PT needs to reach out to the community directly. Efforts by several PT staff have been made to visit various facilities to discuss the practices and perspective of the PT. A trust solicitor has met with groups and organizations regarding the new substitute decision legislation. In addition, the former PT involved legal staff in Canadian Bar Association activities and the charities section participated in general legal education sessions. However at best, these community contacts are occasional and uncoordinated rather than part of a comprehensive strategy.

Another issue regularly cited by representatives of clients in all areas of the PT's responsibilities is the long delays experienced in getting service or assistance. This issue is more fully canvassed below under the heading Timeliness. However one, perhaps exaggerated example, will illustrate the sense of frustration some clients and their representatives feel in dealing with the PT. Apparently about ten months ago the charities section was approached by board members of a charity asking for advice for the

board of directors on some liability issues. The charity, like a very significant number of such entities, does not have the resources to retain professional assistance. While the response from the PT was apparently favourable, the charity is still waiting, approximately ten months later for the PT to provide the advice.

By and large, the PT delivers services without actually meeting clients. The vast majority of contacts are in written form or through telephone contact. The notable exception to this general rule is with respect to investigations where a staff of five to six investigators travel throughout the province to provide investigation and front-end services, primarily with respect to trust administration clients. Other client contacts are not generally a part of regular operating procedures, and remain incidental.

Another difficulty experienced by some external informants involved tracking the progress of files. While external informants were generally not familiar with the internal structure of the PT and simply cited delay and the difficulty in identifying the appropriate contact as an issue, it is clear from discussions from internal informants that the compartmentalization of functions of the PT makes it more difficult for the office to serve clients, particularly trust administration and crown estate clients. The structure of the Office results in client files being transferred from internal department to internal department, particularly trust administration and crown estate files.

The Review Team did not have an opportunity to assess whether the PT is able to service in any material respect communities of new Canadians. In a couple of internal informant interviews, reference was made to the need to have persons sensitive to cultural differences and to ensure that information was available to persons who were unable to cope with English. Undoubtedly the importance of this issue is magnified with the proposed substitute decision making responsibilities of the PT.

Nor did the Review Team have an opportunity to assess the clarity of forms and the simplicity of procedures to any extent. Comments were made by many external informants about particular problems in receiving service which undoubtedly are influenced by procedures of the PT. For example, there were a number of complaints from representatives of trust administration clients about delays experienced following the initiation of the trust relationship. Apparently, it can take up to eight weeks after the PT is appointed to complete procedures and access to the funds through the PT. A similar sort of problem was reported by health care facility administrators and patient advocates who knew of patients, discharged from a facility into the community, but facing substantial delays before things like rent get paid and meal allowances are provided. In one case, the treatment facility makes regular provision for discharged patients who are clients of the PT to take meals at the facility for a couple of weeks following discharge in order to cover the time lag.

RESPONSIVENESS AND FLEXIBILITY

The management structure of the PT makes it difficult to respond to client demands and needs. From internal informants we heard of decision trees which had as many as six steps and situations where the most routine of decisions required the consent of the PT personally. Staff recognizes that this works against their ability to serve clients in a responsive manner.

External informants reported numerous instances of delay in action, with the result that client service had been compromised. The payment of funeral expense seemed to be a common complaint. It was pointed out by a number of external informants that the general practice of banks, following a death, is to pay reasonable funeral expenses, even before a will is probated or an administrator appointed. Where the PT is involved, payment is a major issue. It was reported that the policy of the PT is to choose the cheapest funeral even when the client has substantial assets. In addition, the Review Team was told that the payment record of the PT was so poor that some funeral home operators will not work with the PT. Part of the inability of the PT to meet client needs has to do with the internal approval process, where some funeral expense decisions, at least, require the PT to consent in his or her personal capacity.

It is difficult to assess the extent to which service is adapted to client needs and circumstances. Each case is different, particularly in the trust administration area. In addition, the Review Team heard that the PT lacks, in many area of its responsibilities, clearly defined practices and procedures. There were a number of complaints about the consistency of service given the lack of clarity of procedures. It was suggested by some external informants that the approach and the flexibility depended very much on the individual staff member who had been assigned the file. For example, some staff members are generally reluctant to share information regarding the financial affairs of the client with family members. In other instances, with what were perceived to be similar facts, other staff members are more willing to release similar information. It is widely recognized that financial abuse of clients of the PT is a major issue. It is in every instance necessary to act in the best interests of the client, even if such a result may be somewhat unpopular with family. However, the lack of personal contact with family of clients must make the task of assessing risk almost impossible and certainly contributes to unevenness of practice.

Further, a significant number of external informants suggested that the Office was unnecessarily inflexible in respect of estates and charities litigation. It is a general impression in the legal community that the Office would never settle a matter of litigation, no matter how large or small, and no matter how reasonable and practical such a result might be for the client.

Finally, as regards the ability of the staff of the PT to understand client needs, the central office location makes it difficult for the staff to make a personal assessment of clients, particularly trust administration clients. In the vast majority of cases the staff must make their assessment of needs based on a review of the file, and to a lesser extent, communications with health care and other care givers. Even if the PT had multiple offices, the volume of work currently assigned to individual trust teams simply does not permit personal contact. The system has been designed to function essentially without personal contact. Even in consenting to treatment, the system in place does not make provision for personal contact in most cases.

Training of personnel to understand the special needs of clients of the PT, particularly the trust administration clients, is not provided. A number of external stakeholders have suggested that this shortcoming of the PT is only too evident in the way in which staff deal with clients. A number of external informants emphasized the fact a declaration of incompetence does not mean that an individual has ceased to be a human being, and that each affliction has different implications for the client's ability to interact with the PT.

RELIABILITY

There was a sense among some external informants that the quality of service provided by some staff was uneven in quality. Accordingly, they felt that the results achieved differed widely depending on the trust officer or lawyer assigned to a particular matter. It was suggested that the relative absence of clear policies of the Office contributed to this level of inconsistency. Several patient advocates suggested that they were often more effective in getting a satisfactory result than their clients directly because they had established a working relationship with one or more individuals who were perceived to be particularly cooperative.

Given the general absence of written policies and procedures and the general absence of staff training it is not difficult to understand why the competence of staff may be uneven. In the private trust company environment, which provides a suitable point of comparison for this issue, new trust and estates officers have both an apprenticeship process combined with programs of formal studies. The latter is arranged either at the individual company or offered through a training institute organized by the industry. There is a recognition that clients demand from their fiduciaries a very high standard of client services and that all staff must have the training to meet expectations of clients. The failure to adequately train staff does both a disservice to the clients that are served as well as the staff who are forced to struggle without adequate preparation.

As regards confidentiality, the PT has a difficult challenge in balancing the need to maintain client confidence with the need to ensure that all those who are there to help the client have an adequate understanding of the client's resources. One particularly good

example of where the balance was not achieved is a situation in a nursing home where a long time resident and client of the PT lived in relative poverty, clothed with second hand and discarded items and generally excluded from trips and outings. The assumption was that the man was destitute. On his death it was learned that the man had several hundreds of thousands of dollars in assets. This is one of several examples cited to the Review Team where the Office failed to deliver service in a manner consistent with client needs and expectations.

Finally, patient advocates reported that answers to questions they might pose to clients were sometimes answered differently than if the questions were asked by the clients directly. The example usually cited had to do with requests for funds for discretionary purposes, for example, a gift to a family member or funds to go on a trip. There was reportedly greater reluctance shown to authorize the release of funds if the request was made by the client directly than if the request was made by the patient advocate. If true, such a result can only add to the natural frustration and powerlessness that clients must feel.

RESPECTFULNESS

It is fair to say that the diversity of clients and their needs makes the task of providing appropriate response to clients a very difficult task. However there was some concern that notwithstanding this difficulty, some trust administration clients were on occasion not treated with appropriate sensitivity and respect. This concern was voiced by both patient advocates and an association representing vulnerable individuals. It was suggested that advocates and the representatives of the association experienced better levels of service and greater respect from the Office than their clients on occasion. The association had reached this conclusion by monitoring telephone inquiries to the Office by members of the association. The association found that members of the association were not treated with the same level of respect as representatives of the association who called on behalf of members of the association.

Another related issue where the PT seems to be more successful is the question of respect for privacy. While, as noted earlier, the PT does not always succeed in appropriately balancing off the needs of the client and those who have a legitimate need to know, based on the views of external informants, if anything the PT seems to generally err on the side of caution. A similar decision to err on the side of caution is equally frustrating to some external informants in the Bar, and in some respects the caution may not be quite as well placed. It was suggested to the Review Team in interviews with members of the estates Bar that the PT makes it unnecessarily difficult for heir claimants to prove their entitlement and that as a result legitimate claimants are forced to incur necessary expense in pursuit of their legitimate claims.

Finally, there are two observations which can be made with respect to charities. First, a general observation that the external informants expressed concern that the PT was seeking to insist upon stringent rules to prevent the limited number of cases of abuse and failing to recognize that the vast majority of charities and their representatives were among the most giving and generous members of the community and that the PT was doing them a disservice to regulate them as if everyone was likely to abuse the system. The example cited on more than one occasion was the circumstances surrounding the role of a prominent member of the Bar and the Fox Education Foundation where the payment of fees for services rendered to the charity over a number of years attracted the attention of the PT who ultimately required the reconstruction of financial information for a period of 15 years, at great cost to the parties concerned. It was suggested that the ultimate compromise should not have required the intervention of the court or the embarrassment of someone who had contributed a significant amount of time and energy to the charitable community. A second more isolated issue involved a matter reported by one external informant and a member of the Bar. In this case involving a religious charity, it was reported that the staff member made comments which reflected racial prejudice and allowed his prejudice to complicate the resolution of a matter which took over two years to resolve, at considerable expense to the religious order involved.

TIMELINESS

This issue appears from the perspective of almost every external informant to have interacted with the PT to be a problem of epic proportion. The Review Team heard of instances of simply incredible delay in virtually every major area of the PT's activities - trust administration, crown estates, charities and consent to treatment. With the exception of consent to treatment where the cause for most of the delay is, arguably, beyond the control of the PT, in each other case the delay appears to be a matter of internal procedures and resources available to cope with client requests.

A general problem, for trust administration, crown estates and charities, seems to be the inability to keep up with the regular flow of correspondence and telephone inquiry. The PT has such a poor record in this regard in virtually everyone's mind that it is probably hard to separate myth from reality. However, what the Review Team heard was that it was not uncommon for there to be weeks and sometimes months before a reply was received to a letter. Understanding the difficulties faced by some staff in accessing secretarial support, a matter likely to be addressed by the Operational Review, provides some perspective to the issue. Understanding the impossible workload generally in the PT also undoubtedly is a major factor. However, it is simply not reasonable for a client service organization to be unable to cope with the flow of correspondence when matters of client interests may be affected by slowness in response.

As similar and equally distressing situation was reported to exist with respect to the returning of telephone inquiries. There were report from external informants of regular

long delay or most distressing no response at all. Finally, there were some examples cited to the Review Team of where the failure to act in a commercially reasonable time frame resulted in loss to client or a failure to achieve the client's objectives. An example of loss to a client which could have been prevented by PT action involved the sale of a house at a below market rate by someone with alzheimer's disease. The pending sale was brought to the attention of the PT. When the PT finally intervened the sale had been completed and the PT declined to try to unwind it. An instance of failing to achieve the client's objectives reported to the Review Team involved an elderly man and client of the PT living in a nursing home. Apparently the elderly man and staff of the home on his behalf had repeatedly asked for the PT's assistance in preparing a will since the man was concerned about a family member inheriting who had not been supportive. The requests occurred on a number of occasions over several months, yet the man died intestate.

In addition to the timing issues identified above, a number of specific practices, some of which were noted above certainly need to be reviewed to ensure that the system is functioning optimally. These include the time required for the PT to gain control of the assets and to provide essential funds to the client once control has been obtained, the delay sometimes incurred and reported on by the Provincial Auditor with respect to the timely upkeep and disposition of property, the delay incurred in funding a client upon discharge of a facility, and the return of assets following the end of the PT's mandate, either at death which is more likely or upon the return to competence which is less common. Undoubtedly this is very much a volume of work issue. One has to recognize that no matter how hard PT staff are working there are only so many telephone calls one can get to and so many letters one can answer and still maintain ongoing responsibilities with respect to files.

COST

There was a general sense by external informants interested in trust and estate administration matters that the services provided did not justify fees charged by the Office, particularly by comparison to private sector providers of similar services. One of the realities that the PT faces is that for at least some of the trust and crown estate clients the services could be provided by private service deliverers. It is against the standards of these deliverers that the value of the PT service needs to be assessed. The Review Team was told that service standards are continuing to rise in the private trust sector as new entrants, the banks, make an ever increasing presence. This trend will place additional pressure on the PT to raise its service delivery standards.

Given the vast diversity of services offered by the PT, and given the limited internal review which has occurred, it is difficult to come to any specific conclusions with respect to the value of services provided in any given case or any transaction type. Broadly the

PT charges market rates for its services. The rates are set out above under the general description of the Office in Section III. The PT can not use as an excuse for inferior service delivery, that one gets what one pays for.

In addition, concerns were expressed by some informants that it was inappropriate for government to be contributing the surplus which regularly occurs to the Consolidated Revenue Fund when the actual quality of service was below a minimum level of acceptable quality. The concerns are not new. In the 1968 McGuer Report (Royal Commission Inquiry into Civil Rights) there were serious criticisms of the practice of making and accumulating profits for the government from adults inflicted with disabilities. This is a serious issue which can no longer be ignored given the chronic service delivery problems facing the PT.

A2. Criteria for a Client-Focused Organization

At the time the Review commenced, the Operational Review of the PT was well underway. The Review Team recognized that it could most effectively complement the work of the Operational Review by not seeking to duplicate, to the extent possible, its process. Accordingly, the emphasis of the Review Team was on external consultations, rather than on an internal review. However, the Review Team did meet with many staff members, including all members of senior management, and most of the PTs lawyers and trust officers. In addition, the Review Team was in close consultation with the members of the Operational Review team and reviewed a number of the written submissions it received, as well as its Interim Report. The comments below reflect this more limited interaction with PT staff than was the case in other programs reviewed in this report.

There are a number of apparent contradictions which were brought to the attention of the Review Team. On the one hand, one finds a staff of caring, sensitive people who seem to be generally concerned about the clients served by the PT, while on the other, the quality of service provided is not of a uniformly satisfactory standard. One finds an office with a very high volume of work, yet there appear to be a number of vacancies in the organizational chart and the Office is, as part of a general government constraint exercise, at risk of losing its one articling student and perhaps a number of legal positions. Finally, one finds an office which has in place some leading edge technology (TAMS) and is in the process of implementing other forms (EDI, document imaging), but has old-style management and human resources techniques.

It would appear that the PT does not adequately support the staff's commitment to good client service. There does not appear to be any regular, formalized effort on the part of senior management to focus staff on client service. It is understood from staff comments to the Operational Review that staff appraisals are irregular. There does not seem to be any commitment to staff training, either among managerial or non-managerial staff. As discussed earlier, individual caseloads, particularly with respect to trust administration

services, are very high. Until the Operational Review is completed, it is difficult to assess the extent to which the service quality problem can be attributed to poor management. Whatever the causes it is not acceptable from a client service perspective to be served by inadequately trained, resourced and supervised staff who are not able to meet all client needs.

The poor working conditions of PT staff are another indication that there is not adequate support of staff in their efforts to deliver good service. The physical state of the Office is very demoralizing to the staff and hinders their ability to provide good client service. The Review Team is heartened to learn that proposals for new space are under active consideration.

With respect to the extent to which the PT fosters a supportive atmosphere among staff, the submissions of staff made to the Operational Review would suggest that there is room for improvement. Staff have described unhelpful rivalries among departments and apparently among managers. The PT does not appear to have a reputation for having a consensual, supportive culture. Decisions are reported to be made by senior management, often without consultation with staff. Even among senior management, there seems to have been some inconsistency about who is included and who is not included in major decision making. Nor does the Office appear to have been predisposed to accept the suggestions of some employees in the past. One of the submissions to the Operational Review noted that it had made similar suggestions for changes almost five and a half years ago and that little action had been taken in the interim.

B. Criteria to Establish Well-Being

The mandates of the trust administration, consent to treatment and charities programs are in part to further the well-being of clients served. It is probably fair to say that the programs generally do not consider themselves to be "well-being programs" preferring to see themselves in terms of more concrete objectives, such as providing financial trust services or providing consent to medical treatment.

However, starting from a well-being perspective, there are several things that can be said with respect to the extent to which the services of the PT empower people. First, the PT does not appear to have a history of close consultation with trust administration clients or their family or friends. One reason is the lack of time the Office has to deal with individual clients because of work load. In most instances, it is simply not feasible to provide regular feedback to clients. However, a more important reason may simply reside in the culture of the PT. It has never been seen as necessary to the Office's work for trust administration clients to be consulted. Given this reality, it is hard to see how the existing delivery of services results in any meaningful empowerment of clients. Clients are not regularly informed of their affairs, although they have the right to obtain

reports. There is no sense that the Office is working in partnership with the client. Indeed, the Office is not so much a partner as a substitute for the client with all of the rights and powers of the client. Finally, clients are not involved in any way in setting or changing service standards.

One reaches similar conclusions with respect to the other major areas of the PT - crown estates, charities and consent to treatment. The PT appears to function in each of these areas of responsibility one step removed from the clients being served. This practice is particularly questionable in the context of consent to treatment services. By contrast, the Office of the Official Guardian, which has some substitute consent responsibilities with respect to psychiatric patients, regularly meets with clients before decisions are made.

C. Criteria which Ensure Rights

The trust administration role of the Office is quite paternalistic. In large part, this is a reflection of the origin of the statutory regime the PT is asked to administer. The laws affecting the judicial determinations of incapacity or incompetency and the appointment of guardians can be traced to 19th century lunacy law. These laws emphasized the protection of the estate rather than the person.

In carrying out its trust administration responsibilities, the PT does not seek to foster rights. First, clients are generally deprived of their basic contractual rights at the time they become trust administration clients. There are rights advisers provided to some of the clients of the PT (e.g. psychiatric patient rights advisers). However, the Office does not appear to see itself as playing an active role in explaining rights to individuals or ensuring that conditions exist for people to exercise their rights.

Similar conclusions also apply to other major program areas. For example, in the crown estates area, it appears that, based on discussions with external informants, the PT seems to discourage the pursuit of rights. This is reflected in the less than concerted efforts of the Office to locate heirs. In the area of consent to treatment, the PT first seeks a court order confirming incompetence, which is very disempowering of clients.

Informant interviews did not reveal a problem with the PT providing services in a fair, non-partisan and non-discriminatory manner. However, the Review Team does not feel that it has adequately assessed whether there are in fact barriers to accessing the Office for clients of different racial or cultural backgrounds. Given the difficulties faced by the PT with regular service delivery, it would not be surprising if there were some problems associated with dealing such clients. In addition, the sole Office location makes it more difficult for clients outside of Toronto to access trust administration services.

The PT takes very seriously its responsibility to protect against abuse. In the area of trust administration, external informants cited a number of instances where the PT had been able to stop or prevent financial abuse of clients. The new Substitute Decisions Act, 1992 will substantially enhance the PT's role and powers in this regard. Intervention by the PT in abuse cases was extremely valued by external informants.

In the area of charities, the Office is widely respected for its efforts to control abuse by organizations with respect to charitable status. However, there appears to be less consensus among external informants as to whether the PT has struck the right balance with respect to establishing rules of general application which are designed to prevent abuse (i.e. breach of trust) from occurring while not over-burdening the vast majority of charities who are not likely to be abusive in any case.

D. Criteria which Focus on Community

At this point, there cannot be said to be any organized or structured regime of community accountability. While the previous Public Trustee made a respected effort to reach out to the community for advice and assistance, this reflected more a personal commitment than corporate policy. The same can be said about citizen participation and the role played, for example, by the informal charities advisory committee which was discussed earlier. The Office has never taken advantage of the statutory mechanism available to it to appoint advisory bodies on anything other than the investment portfolio. These advisory bodies, if appointed, could have representative community participation.

It is interesting to note that the recent reform process in British Columbia has focused on the importance of public accountability. In the Report entitled "How Can We Help" prepared by the joint working group consisting of community and government representatives, it was recommended that a community based advisory group be established. The mandate of the committee would be, among other things, to provide public input and advice with respect to the strategic direction of the new Office and the scope of the Office's public education initiatives, and to review and evaluate standards, policies, legislation and regulations. The new community advisory board will also review the resolution of consumer complaints and consumer satisfaction studies. It was recommended that the board be regionally representative of consumer groups, service providers, self-advocates and the general public and not include staff from the Office. As well, the creation of an ethics committee was proposed. The essence of these recommendations seems to have been reflected in the Public Guardian and Trustee Bill which was introduced in the provincial legislature of British Columbia in early June, 1993.

Finally, it is difficult to assess the extent to which the PT takes into account the interests of different stakeholders. In fairness to the Office, the entire focus has been on coping

with the existing responsibilities. There has been little time to do much else. It is clear that the PT has recently begun to think more about its relationship with stakeholders, in part as a result of the impending implementation of the Substitute Decisions Act and this Review.

E. Positioning the Program on a Continuum of Supports

Broadly speaking, the trust and estate administration and consent to treatment services of the Office are "last resort" services. Generally, these services do not overlap with other services offered by the public sector. There are some issues concerning how the Office interfaces with the Office of the Official Guardian; however, each Office appears to be sensitive to the need to avoid duplication of service and protocols have been developed to assist in this process.

At the same time, it is important to remember, in other jurisdictions, that the functions played by the PT in the trust administration and crown estate areas are under differing forms of public control. While virtually all major commonwealth jurisdictions have Public Trustee Offices which provide optional trustee services to incompetent adults, some jurisdictions contract out crown estate work to the private Bar or private trust companies. In addition, in New Zealand and more recently in Australia, the trend has been to "corporatize" public trust functions. Ultimate responsibility remains with the state, but delivery is through a vehicle which is more like a private corporation than a government department. While the Review Team has at the date of this report only limited information with respect to these jurisdictions, it is fair to say that these models have been successful and, undoubtedly, there is much to be learned from them.

In the area of charities, some have questioned whether the role and responsibilities should be assigned to Revenue Canada. Currently, Revenue Canada has a registration process related to the qualification of charitable organizations for the purposes of the Income Tax Act. As part of the registration process, Revenue Canada decides whether the objects of the proposed registrant are charitable. In addition, there is a regular reporting requirement. The PT and Revenue Canada appear to have a good working relationship where the work of the PT is seen to add value to the regulatory process in the broad sense focussing on the use of the charitable property.

Those informants who seem to favour a reassignment of responsibilities in the charities area are those who expressed dissatisfaction with the way the Office administers its charities responsibilities. It is likely that if the PT were to adopt a more reasonable approach to some of the issues discussed above and solicit input from interested stakeholders, interest in such a proposal would diminish. In addition, the staff of the PT have pointed out that there would be significant jurisdictional issues raised if Ontario were to seek to vacate the field. It is unlikely that without some form of intergovernmental

delegation of administrative authority, the federal government would be unable to assume the role currently played by the PT in respect to charitable property. Finally, it should be noted that the Law Reform Commission of Ontario has commissioned Professor David Stephens of McGill University to prepare a report on the law of charities. The report is expected to be delivered to the Commission this fall. It is likely that the report will address issues relating to the jurisdiction of the PT in the area of charities.

Traditionally, the PT has functioned largely independently from other programs of a social justice nature within government, with the possible exception of the Office of the Official Guardian in respect of some litigation matters. There is no doubt that the Office has great potential to play an important leadership role in providing innovative services and should see itself in partnership with other service providers who provide assistance to clients of the Office. There should be a strong degree of co-ordination between the Office and the Ministries of Health and Community and Social Services. The new guardianship responsibilities will heighten the need for the Office to form linkages with other programs and program deliverers.

Public education, training and development are all key components of any effort to better position the Office in a continuum of supports. The Office has an essential public education role to play in helping the public access its services, the services of others and in identifying appropriate alternatives to government services. A necessary adjunct to this public education initiative will be training staff of the Office and staff in other programs to facilitate access by clients to the services offered by the Office and to identify appropriate alternative services. The process should be a dynamic one. The Office should be involved in seeking to develop new measures, procedures and concepts, and to address deficiencies in the existing regime.

In the case of the trust administration and crown estate areas, the education offered should be focused in a way which makes most sense for the particular audience. For those still able to plan their futures, education should focus on the range of options available and assist in facilitating cost effective solutions - for example, how to avoid or minimize potential involvement of the PT. For example, in some Australian jurisdictions, will planning services are offered at little or no charge to the public. A different program of education would be appropriate for health care professionals and facility administrators, and for family and friends of clients or potential clients of the trust administration services.

Education is also key to the role played by the PT in the area of charities. There are at least two publics which need help. First, there are the many thousands of charities, most of which cannot afford professional assistance and for whom the PT is both their professional advisor and regulator. The need here is quite compelling. For the most part many are having a hard time trying to survive and attract competent public spirited citizens to assume administrative and director roles. Any significant regulatory burden

which is not absolutely essential has the potential to cause great harm. In addition, ignorance of the law probably more so than intentional violation is the problem. Here, the PT should be influenced by the role played by regulators of credit unions and co-operatives in the Credit Union and Co-operatives branch of the Ministry of Finance. These regulators are regularly called upon to provide advice on a wide range of issues to entities they regulate.

The second public which must be part of a process of education with respect to charities are the professional advisors, primarily lawyers and accountants. To some extent, the PT has a good record in this area. The PT participates in educational activities with the Bar and, as noted earlier, contributed to the handbook on non-profit corporations. In addition, the Review Team was told of the work the PT is doing with the accounting profession to help establish new and appropriate accounting rules for charities. These are good initiatives. However, more can and should be done.

E. Criteria for Cost-Constraint and Administrative Simplicity

There are some difficult resource issues which the Office faces. The first is to assess objectively the needs of the Office. Such a needs assessment can only be done effectively once one is satisfied that the structure and organization of the Office has been engineered to achieve the greatest work-flow efficiencies. This process is already underway in the form of the Operational Review. While it is not really possible to reach any definitive conclusions with respect to resource needs in the absence of such a determination, it seems pretty clear that substantial additional financial resources will be needed to ensure minimum acceptable levels of service to clients, particularly in the trust and estate areas. Once such a process is completed and some objective assessment of service delivery has been undertaken, the PT may then be in a position to participate actively and aggressively in seeking to achieve new efficiencies from existing resources and to identify cost savings.

One of the difficulties faced by the PT in establishing cost effective criteria is in establishing benchmarks. For example, is it appropriate to compare the 40 staff in the Office of the Public Trustee in British Columbia who are primarily responsible for 7,000 living trusts with the 40 staff in the Ontario Office who have carriage of 17,000 such files, or does the presence of various support branches in the Ontario Office including trust accounting, asset administration and investigations make such a comparison less valuable? Is it of value to compare the caseload of a private trust company officer, which is approximately 200 cases, to that of a trust team at the PT which appears to be around 1,400?

On the question of technology, the PT seems to be in a good position having recently introduced a computer based trust accounting system. At the same time, one should

understand that similar systems have existed in the private trust company sector for 30 years. The PT appears to view technology as a partial solution to some of the work load issues, and is making progress to introduce document imaging and electronic data interchange. The successful introduction and implementation of new technologies, however, requires that staff accept and use the new technology. It should be noted that there are reports of a failure to encourage all relevant staff to make use of the technology in their work, which signals the need for further training and an assessment of whether the existing technologies have been employed to the greatest extent possible.

Undoubtedly, the period ahead is going to be one of great change for the PT and will be difficult for staff. One recent experience from which the PT may learn a great deal is the recent efforts by the Public Trustee of British Columbia to achieve some of the same changes which are now under contemplation in Ontario. In an informant interview with the Review Team, the Public Trustee of British Columbia revealed how difficult the transition process had been. The details of the transition are described in the Section of this report dealing with Public Guardianship. For the present purposes, what needs to be pointed out is that a significant number of staff at the B.C. office were unable to make the transition successfully. The process in Ontario is not likely to be any less disruptive in human terms. Accordingly, it is absolutely essential that any process of change make provision for counselling and other services necessary to support staff. In addition and very importantly, change will need to be managed to minimize disruption to clients.

Throughout the process, leadership in the PT and at the highest levels of the Ministry of the Attorney General are essential. The direction must be shared with all staff and all staff must be involved in the implementation process, helping to design specific changes and providing feedback on the changes as they occur. Training of staff to assume new roles and responsibilities must occur before new roles are assumed. To the extent possible, concepts such as multi-skilling, job sharing, task rotation and team responsibility should be considered.

F. Broader Corporate Criteria

The programs offered by the PT touch the lives of many thousands of Ontario residents every year. As such, they present a tremendous opportunity to reaffirm the sense of commitment to service which is an imperative of the Ministry and the government as a whole. To a large extent, this opportunity is being missed.

The PT is a perfect fit with many of the other priorities of the government and the Ministry, including the advocacy project and the long term care initiative. That the Office is not more successful is particularly troubling given the objectives of this government in reaching out to interests in the community which have been traditionally under represented.

The new Substitute Decision Act, 1992 which is discussed in greater detail in Section VI of this report along with the advocacy and consent to treatment statutes, are major legislative initiatives of this government. In some important respects, they will touch the lives, at one time or another, of countless Ontario residents. They may, over time, be seen to have been one of the most important legislative initiatives undertaken by the current government. The implementation of the new laws presents an excellent opportunity to refocus and re-engineer the PT so that it can effectively carry out both its current and new responsibilities.

RECOMMENDATIONS

1. Implement Recommendations of the Operational Review

Recommended Action:

The Ministry of the Attorney General, in consultation with the Public Trustee, should implement the recommendations of the operational review.

Discussion of Recommended Action/Outcome:

There are many valuable recommendations in the Interim Report of the Operational Review which will have the potential to enhance substantially customer service. These include options with respect to management structure and recommendations with respect to human resource management and program delivery and business practices.

2. Focus Mandate of Public Trustee

Recommended Action:

The Public Trustee should establish a special task force drawn from the private Bar and the charities community. The mandate of the Task Force on Charities should be generally to advise, on an urgent basis, the Public Trustee on matters of policy with respect to the jurisdiction of the Office in the matter of charities and more specifically to make suggestions and recommendations with respect to those policies.

Discussion of Recommended Action/Outcome:

As noted above in Section V, virtually every external stakeholder who expressed views with respect to the charities mandate of the PT expressed grave concerns about the manner in which the PT was carrying out that mandate. The recommended action would signal a willingness on the part of the PT and the Ministry of the Attorney General to address the long standing and strongly held community views that the PT is not acting in an appropriate manner with respect to its statutory mandate. The work of the task force would likely lead to revisions in existing policies, the creation of new policies and to opportunities for the PT to better deploy scarce resources to meet regulatory priorities. The task force would also study and advise the PT on the impact of the Ontario Law Reform Commission report prepared Professor Stephens, once it is released this fall. To the extent that the revisions reflect client and stakeholder concerns, they will be welcomed by the community. The work of the task force will also help to focus the scarce resources of the PT in the area of charities to best uses.

The body would be characterized as a "task force" rather than an "advisory committee", in large part because the next recommended action will actively consider the transference of responsibility over charities to another office of government. As a result of this additional recommended action, it is possible that the PT would have responsibility for charities for a limited additional period only. The proposed body is being referred to as a "task force" since to many the term sounds less permanent than an "advisory committee".

Recommended Action:

The Public Trustee should establish a second special task force made up of representatives from the private Bar, the charities community, and the ministries of consumer and commercial relations, finance and the attorney general. The mandate of the task force should be generally to make recommendations to the public trustee concerning whether the public trustee should continue to have responsibility for charities, escheat corporations and cemeteries. In the event that the task force recommends that all or a portion of the current responsibilities should be surrendered to another office of government, the task force would be asked to prepare, for the consideration of the Attorney General, recommendations with respect to the appropriate destination of the program or programs.

Discussion of Recommended Action/Outcome:

A number of external informants were concerned with the breadth of the mandate of the PT which includes trust administration, crown estates, charities, escheat corporations, cemeteries and substitute decision making. These views were

consistent with earlier concerns raised by the Provincial Auditor. Further, the Ministry of the Attorney General last fall indicated an intention to review the program mandate of the PT. Finally, the PT has done some useful thinking about the charities role and where it might otherwise be placed in government which will be of assistance to the task force.

It was suggested that the breadth of mandate worked against the office focusing sufficient attention on matters such as charities. In addition, it was felt by some that the PT had been less effective in overseeing the office as a whole because of the unreasonable expectation that any one person could have the necessary expertise to supervise all areas of the office. Any reduction in the expansiveness of the role should permit the office to focus senior management time and other scarce resources in servicing other key client groups.

3. Create Advisory Committees with external stakeholders

Recommended Action:

The Public Trustee should establish one or more external advisory committees composed of clients and other stakeholders which should provide public input and advice on such matters as setting the strategic direction of the Office, the Office's public education initiatives, and general policies of the Office. In addition, the committees would scrutinize resolution of client complaints and results of consumer satisfaction surveys.

Discussion of Recommended Action/Outcome:

Given the diversity of interests of the Office, it would appear to make most sense to establish external advisory committees for at least the trust and estates functions at this time. Recommendation 2 contemplates a special interim process for the charities responsibilities of the Office. It also contemplates that another task force would study the question of moving the charities, escheat corporations and cemeteries responsibilities to another branch of government. If for some reason it was decided not to transfer these responsibilities, the task force composed of external participants could become the charities advisory committee. Some consideration could also be given to creating a consent to treatment advisory committee. One should review this possibility against the likelihood that this function will be substantially revised soon and that the committee will need to focus more generally on public guardianship.

Implementation of this recommendation will help the PT address on a timely basis outstanding policy issues of importance to clients and stakeholders. The committees will also be an important source of advice to the office in general and the PT in particular.

4. Create Customer Service Function

Recommended Action:

The Public Trustee should establish a customer service function within the Office which would be responsible for, among other things, receiving and coordinating the responses to client service related concerns, establishing in consultation with the public trustee an internal client service committee, establishing in consultation with the public trustee one or more client service advisory committees and conducting on behalf of and at the direction of the Public Trustee ongoing client research to evaluate client satisfaction and program effectiveness.

Discussion of Recommended Action/Outcome:

At the current time, the Office has no meaningful ability to assess the level of customer satisfaction with the services which are being provided. There is no one in the Office who is responsible for addressing concerns of clients about services offered. Nor is there anyone in the Office responsible for obtaining feedback from clients and stakeholders on services offered by the Office. The only way in which the office can assess customer satisfaction is to interview staff members about their individual experiences, review the central complaint files of the office and review with the Ministry of the Attorney General complaints it has received. One might suggest that some of the serious client concerns could have been mitigated had this function been in existence. In one form or another virtually every organization which has a client service perspective has a function of this nature.

5. Offer Telephone Inquiry through 1-800 services

Recommended Action:

The Public Trustee should re-establish 1-800 services and then publicize such action as soon as possible.

Discussion of Recommended Action/Outcome:

The decision to eliminate its 1-800 service, in response to financial constraints, was a symbol to many of the insensitivity of the PT to the needs of its clients. The restoration of this service will go some way to creating a more favourable impression of the PT in the community and will allow clients of the office outside Toronto to more easily communicate with the office.

6. Improve Front End of All Processes

Recommended Action:

The Public Trustee should ask the senior managers of the Public Trustee, in consultation with the operational review team, to review all front end procedures of the Office within 90 days of this report and report all possible efficiencies from both a client and an office perspective to the Public Trustee, along with a plan for implementing changes. Such review should include consultation with affected clients or stakeholders, as the case may be. In particular, a review of the role and procedures of the Office with respect to consenting to treatment be undertaken without delay.

Discussion of Recommended Action/Outcome:

This recommendation will be welcomed by many clients of the Office. In many cases, existing procedures may simply be confirmed. In the area of assuming responsibilities with respect to new trust administration clients or crown estate clients, there may be some systems procedures which can be made. In other areas such as the manner of reviewing applications for charitable letters patent, the record of the office, as far as timeliness is concerned, is good and it is unlikely that any improvement can be found. There is one area which requires special attention. The PT should, without delay, review the existing legislative regime with respect to consent to medical treatment and, after an assessment of the risks to the Public Trustee, take measured steps, on an interim basis, to streamlining the existing regime. To the credit of the existing PT it is understood that the issue is already under review.

7. Customer Service Standards, Manuals, Benchmarks

Recommended Action:

Following additional research into client expectations for service and reasonable benchmarks that may address client needs, the Public Trustee should, in consultation with the external advisory committees, the external customer service committee and staff, establish objective customer service standards. At the same time the Office should prepare customer service manuals which set out customer expectations regarding service and the protocols and procedures required of staff to meet client expectations.

Discussion of Recommended Action/Outcome:

At the current time, one of the most important criticisms of the Office is the unevenness of service. While a number of clients report satisfactory service, many others feel that the services they received were unsatisfactory as evidenced by inadequate response times and uneven or unsatisfactory response to client needs. It is not surprising that these findings exist. There are, in general, no service standards and benchmarks which have been established for staff. This recommendation will allow the staff to begin to understand the extent to which improvement is necessary and allow the PT to quantify the resources which are necessary to achieve these standards.

8. Establish client education function

Recommended Action:

The Public Trustee should establish a consumer education function within the Office which would have as its mandate the development, in consultation with staff of the Office and external stakeholders, of various written materials, programs, and other educational approaches to ensure that easily accessible information about the services provided by the Office and alternatives is available to all clients, stakeholders and the public in general.

Discussion of Recommended Action/Outcome:

As discussed above in this section, the Office has not had much ongoing contact with the communities served. In large part this has been a reflection of the limited

resources available to the Office. There has been a perception that any significant public contact or education programs might lead to additional demand for service which the office would be unable to provide. At the same time it appears that the limited experience of the Office with public outreach has been well received.

VI. IMPLICATIONS FOR IMPLEMENTATION OF PUBLIC GUARDIANSHIP

MANDATE

In the fall of 1994, it is expected that the Government of Ontario will proclaim into force four new statutes for which Royal Assent has already been given: the Advocacy Act, 1992, the Consent to Treatment Act, 1992 (CTA), the Substitute Decisions Act, 1992 (the "SDA") and the Consent and Capacity Statute Law Amendment Act, 1992.

Once proclaimed, these Acts will impose a range of important new duties and responsibilities upon the Public Trustee. From the perspective of the Office, the most important of these new Acts is the SDA. This Act deals comprehensively with property management and personal care decisions made on behalf of mentally incapable persons. In addition, the Public Trustee will be expected to play an active role in respect to the activities of the Consent and Capacity Review Board under the CTA.

In a preliminary report prepared by a member of the staff of the Public Trustee, 45 new and mandatory functions were identified as being assigned to the Public Trustee, which is to be renamed the Public Guardian and Trustee (PG&T). Each of these responsibilities will require staffing and additional resources. The most significant and complex of these new functions were identified as follows:

1. Presentation in Court and before the new Consent and Capacity Review Board.

The PG&T will be required to arrange counsel for persons subject to capacity proceedings under the SDA, at the direction of the court. Under the CTA the PG&T will be required to arrange counsel for persons who come before the Consent and Capacity Review Board to seek review of a health practitioner's finding that he or she is incapable with respect to understanding and consenting to treatment.

2. Guardianship of the Person: Duty to ascertain and follow prior competent and current wishes.

The SDA creates an entirely new set of mandatory and discretionary responsibilities for the PG&T with respect to guardianship of the person.

- For example, the PG&T may accept powers of attorney for personal care.

- The PG&T is required to make provision for the validation of powers of attorney for personal care which name a private attorney and to apply to court in the event that the PG&T refuses to validate the power of attorney.
- The PG&T must be notified of changes on powers of attorney for personal care which name a private attorney.
- The PG&T may apply to court to be appointed guardian of the person for a person who is incapable of personal care.
- The PG&T has a duty to investigate any allegation that a person is incapable and at risk of serious adverse effects to his or her person.
- The PG&T is required to apply to court for temporary guardianship of the person where there are reasonable grounds to believe a person is incapable and prompt action is required to prevent serious adverse harm.
- The PG&T, as guardian of the person, must advise incapable persons what the PG&T's powers and duties are, ascertain and follow prior competent wishes, promote incapable clients in decision making about his or her personal care and foster the client's independence, foster regular personal contact between clients and supportive family and friends and ensure consultation by the PG&T with the same.
- The PG&T must approve amendments to management plans of private court-appointed guardians.
- The PG&T and any other person appointed as a guardian may apply to court for directions.

3. A new substitute consent function

Under the CTA, the jurisdiction of the PG&T will be expanded from acting as a last resort decision maker with respect to procedures performed in public hospitals to last resort decision-making for all forms of medical or psychiatric treatment wherever they may be performed or provided.

4. Registration System

The PG&T is required to establish a register which will identify whether or not there is a guardian of property, guardian of the person or attorney under a power of attorney for personal care appointed for any specified individual.

A FRAMEWORK FOR RECOMMENDATIONS RELATED TO CRITERIA

The following recommendations are offered for the consideration of the implementation team working on the SDA. Drawing upon the strengths and weaknesses of current programs, documents and interviews gathered from other jurisdictions, interviews with Ministry staff, and interviews with external stakeholders, these ideas are intended to support development and to forward options for structuring this role. After each recommendation, a discussion of the findings from this review which inform it is presented.

These implications/recommendations stem from a framework which attempts to develop a more readily accessible, flexible, efficient, cost-effective, and client-focused system. They work on the premise that partnerships among communities, consumers, caregivers, and service providers will facilitate a continuum of support and greater choice for clients.

Our framework also stresses the need to take an holistic approach to health, recognizing the links with economic, social, and emotional well-being, while still providing protection against conflicts of interest. It promotes a healthy, independent and preventive lifestyle; the integration of services so that individuals can have ready access; and not-for-profit service delivery.

These principles will concretely require public education, the involvement of a range of stakeholder groups, delivery of high quality client-focused services in the context of accountability and effective management, and a search for economies of scale in administration which take into account cost constraints expected to have dramatic impacts on the quantity and types of services available in the future. Issues related to checks and balances, both through bureaucratic controls and through community involvement are also considered below.

Recommendations Related to Traditional Client Indicators

NEEDS MET

1. Develop a clear rationale for the activities of the program in relation to the continuum of supports currently available to clients, both in the community and from government.
2. Develop clear protocols and manuals to guide and limit staff activities.

3. Publicize the implications of the SDA broadly by reaching out to community and client stakeholders.

For a number of years, a growing number of voices have called for the reform of laws governing mental incapacity. These have included parents of individuals labelled with developmental handicaps, groups representing the elderly, social service agencies, public health authorities, physicians, hospitals, self-help groups of persons who have received psychiatric treatment, organizations representing the disabled, and the responsible ministries of government. The need for change appears to be widely accepted. The reasons are multi-faceted.

First, the population is continuing to age. Population projections indicate that by the year 2001, four million Canadians will be 65 or over. By 2031, there will be six million elderly Canadians, representing 21% of the total population. The fastest growing segment of the elderly are those over 85, primarily as a result of advances in medical care which are improving physical condition, but not necessarily mental health. Despite revolutionary breakthroughs in the treatment of mental health issues, it is likely that the number of individuals which require assistance in decision-making will increase.

Second, for some time, de-institutionalization has been a government policy priority. Over the past several decades, increasing numbers of individuals housed in large public institutions have been transferred to smaller group homes or community living situations. In fact, the Minister of Health announced in June 1993 that over the next decade the number of institutional psychiatric beds per 100,000 of population will be reduced by almost half, from approximately 5,800 beds to approximately 3,000 beds. This move to the community, while applauded as encouraging greater flexibility and autonomy, also creates different kinds of risks. Involvement and accountability for decision making on behalf of individuals must be ensured within these new structures.

Third, there is growing evidence and knowledge concerning the abuse and neglect of the elderly. It is believed that this problem will grow as the population ages. There is a perception that guardianship can be designed as an effective tool on an emergency basis to address instances of neglect or abuse and, in the longer term, to prevent reoccurrences.

Fourth, as discussed more fully below, the reform of guardianship law has been stimulated by the Charter of Rights and Freedoms. Most observers see guardianship as deprivation of liberty. As a minimum, the Charter provides safeguards to individuals in the areas of procedures for appointing guardians and the practices of those appointed as guardians.

Finally, there have been wide-ranging criticisms regarding the antiquated legal framework in Ontario and other jurisdictions. Since mental health legislation has not been significantly updated, it has been suggested that the law is archaic, based on 19th century

lunacy law. These laws provided for the care and protection of the physical property of lunatics, emphasizing the protection of the estates of those individuals. In addition, there has been criticism of the "all or nothing" nature of the estate guardianship order, which states that if a finding of incapacity is made, the individual is fully deprived of his/her rights. Many object to the inclusive nature of this assumptions, preferring that the kinds of decisions which need to be substituted should be specified. The requirement that there be a finding of mental incapacity has also been an area of considerable debate. Many feel that there are no satisfactory, standard definitions and that we need to recognize that the condition is not always absolute or permanent. Further, there has been disagreement about the fact that in many instances incompetency emerges gradually. Overall, existing legislation has been criticized on the basis that it is dominated by the principle of benign paternalism, which is no longer a satisfactory basis upon which to provide support and assistance to those in need.

In light of these debates, there is an expectation that new laws will reflect a different set of values. Given the intrusive nature of guardianship, it has always been seen as a last resort. Now, however, many suggest that guardianship must be reserved to severe cases of disability and vulnerability. To ensure that this happens, they want a developed system of advocacy and support services. At the same time, they want greater clarity between procedures relating to consent to treatment and the rules regarding guardianship. Others parties reject the notion of guardianship more fundamentally, arguing that it infringes on the basic rights and self-determination of the person. They also raise concerns about the potential that individuals who have been declared incapable under the SDA may suffer deprivations of rights under other laws and requirements. These advocates call for readily accessible, practical and effective alternatives.

For the purposes of this review, these controversies suggest that implementation of the SDA must proceed with a vision that guardianship be the least intrusive, stigmatizing and disempowering mode of intervention possible. Any order must be designed to meet the needs of the individual, time limited, subject to automatic review, and revocable at any time. This will position the SDA carefully on the continuum of supports.

(in financial area it's all or nothing)

These debates also suggest that the Office, its staff, and the public must come to as clear an understanding of the realities and expectations surrounding guardianship as a last resort. These principles need to be set out clearly in formal protocols and manuals. They need to be open to transparent review.

Finally, these debates suggest the urgent and immediate need to broadly communicate the intents and limitations of the SDA and its intended implementation to the communities directly involved and the broader public. Media campaigns alone will not be sufficient to develop the necessary awareness. Direct outreach, adopting a "train the trainer" approach to existing community organizations, client groups, facilities, and others, appears to be most realistic and accessible means by which information can be conveyed

to the community. At minimum, one individual, now and over the period of implementation, could travel across the province explaining the SDA, its implications and the appropriate alternatives to with community groups, seniors homes, group homes, professionals, and others.

British Columbia

For the last year, the PT has provided partial funding (the rest provided by a Health and Welfare Grant) to an voluntary sector organization, chiefly supporting one individual who visits local communities to explain the implications of the forthcoming guardianship regime. The visits occur on an invitational basis to communities. They are intended to build a network which the Office with which the Office will be able to link and provide further information.

ACCESSIBILITY

4. Since a regionalized and personalized presence is necessary, if an order of public guardianship is in place, offer services on personalized case basis, ensuring accessibility to clients.

There really is no way to offer personal guardianship services except on a direct and personal basis, through a delivery mechanism which ensures broad and unrestricted access to all members of the public. In addition, the Review Team was told that delivery had to be personalized. It would be impossible to deliver personal guardianship services in the same manner as trust services. The "bank account" approach to the delivery of services which was perceived to exist for trust clients would not be tolerated. The nature of the work meant that the personal guardianship representative had to stand in the shoes of the person represented and have contact with the person, family, and close friends.

Informants, including parents of potential guardianship candidates, representatives of associations, members of the Bar, government officials and members of the Office of the Public Trustee consistently expressed the view that guardianship services can not be delivered from one central location in Toronto. At the same time, none of the informants offered a model for ensuring accessibility.

Similarly, the Advisory Committee on Substitute Decision-Making for Mentally Incompetent People (commonly referred to as the Fram Committee) stopped short of offering a model preferring to recommend simply that the PG&T should be oriented to providing more personal service than the existing Public Trustee and be organized to respond quickly to serious situations in all areas of the province. The opportunities to deliver local services through coordination with other government services, by sharing

both administrative support and space, need to be further explored. In addressing this issue, there are undoubtedly many lessons to be learned from other jurisdictions.

Quebec

The Office of the Public Curator operates with the concept of a "guichet unique" or one-stop service. This means that one person in the Office of the Public Curator responds to all questions from all corners concerning one adult. For example, the Protection Branch is organized into teams and each team has 300 to 400 files. A team consists of at least one professional member who, for example, might be responsible for the sale of property and seven to eight "techniciens en administrations" or service agents at the level of administrative assistant. In complex cases, social workers are also involved with the team.

The staff are organized into five teams which are located in four regional offices in Montreal and one regional office in Quebec City. In addition there are three other small regional offices. The location of the regional offices was selected according to the volume of clients in a particular area. The staff on each team consists of either a lawyer or a notary, "techniciens en administration" and support staff: size varies from 27 staff in Quebec City to 13 in Montreal Centre.

There are also three small regional offices which each have a staff of two professionals who might be social workers or specialists in finance, commerce or whatever the clients in a particular region need. The offices are located in Chicoutimi, Trois Rivières, and Sherbrooke.

The Director of La Direction de la Protection tries to meet with each client once a year; however, the current director conceded this is only an objective. In practice, in public and private establishments or institutions, committees are set up to ensure client services for adults and to ensure client input. Clients and beneficiaries [sic] are given opportunities for input through regular meetings with the committees in a particular hospital or institution. In reality, the person who is responsible for the particular files goes to an institution to meet with the clients. Again, these staff are not professionals but "techniciens en administration".

British Columbia

The new PG&T Office will adopt the concept of one-stop shopping because they believe that is what the public wants. In the current vision of the new Office of the PG&T, approximately five satellite pilot projects will be set up in different communities in order to maintain the relationship with the community. Kelowna and Prince George are possible locations; three other locations are yet to be determined. All the satellite offices will be linked to Vancouver, all the PG&T

computer systems will be kept in Vancouver and the computer systems will be linked to the Ministry of Finance in Victoria. It is anticipated that the staff will double when the new legislation on guardianship is implemented.

To be economically viable, satellite offices may have only part-time staff. One model satellite pilot project might be set up with individuals selected from the community but trained by and accountable to the PG&T. The level of credentials or skill set to provide this function has not been determined.

Alberta

Alberta has had a Public Guardian through legislation since 1979. This Office holds responsibility for all public guardianships as well as reviews all private guardianship orders. Since the Public Guardian has ultimate responsibility for all decisions whether they are made in the head office, the regional offices, or the sub-office, and since he always retains his decision making powers, he has to authorize responsibility. He does not delegate responsibility. There is no model of one-stop shopping as seen in other jurisdictions. However, the Public Guardian does have three regional offices located in Edmonton, Calgary, and Red Deer. There is also one sub-office in Lethbridge, but it does not have a manager reports to the Calgary Regional Office. There are a total of 35 people on staff and 22 are professionals.

In Alberta, the regional office representatives of the Public Guardian try to meet with the clients once every three months and they must at least telephone clients and family members. The Public Guardian is presently developing a consumer satisfaction program but on an individual basis, not for a group. With regard to a "reasonable" case load, a program representative indicated that a good public guardianship to client ratio would be 45 or 50 clients to one staff member. He noted that in 1983 to 1984 the Public Guardian had 69 staff and a total of 950 clients, whereas in 1993 the Public Guardian's office had 35 staff and 1,725 clients. Therefore, the number of clients has doubled since 1983 to 1984, there are triple the number of private guardianships and one-half the number of staff that were available in 1983 to 1984.

TIMELINESS

5. Ensure that the "front end" of all processes are engineered to minimize delay and administrative burden to clients and the PG&T.

Those informants who had experience with the services of the Office of the Public Trustee were quick to point to the general unsatisfactory delay in the processing of certain

types of applications. Cited as examples were delays associated with the payment of such routine bills as funeral expenses, the transference of client funds back to clients upon the termination of trust responsibilities, and the consenting to non-emergency medical treatment in public hospitals for psychiatric patients. It was the view of these informants and everyone else the Review Team met to discuss the issue of the PG&T that the services would need to be delivered promptly, with a minimum of administrative requirements for the client and for the staff of the Office. Given this imperative, all proposed procedures should undergo an administrative review to ensure that they are the least burdensome alternative for all concerned.

6. Offer telephone inquiry through 1-800 services.

Telephone access is essential to the guardianship role given the need to substitute decisions for clients and to access immediate information and support in emergencies. Screening of calls is essential in order to ensure that true emergencies exist. Subsequent to screening, a "beeper" service may be necessary as a contact to agents for evenings and weekends. In the event that individual case agents are not immediately available, the office will require a group of specialized agents able to review file data by computer and assist in emergencies.

British Columbia

In B.C., the new PG&T will continue to use the government general inquiry telephone service. This allows individuals across the province to call any government department at no charge. It is anticipated that an emergency number with screening may be necessary to accommodate urgent needs.

Alberta

The Alberta Public Guardian relies on the government's Regional Information Telephone Enquiries System (RITE). This allows access to a central exchange or operator without charge.

7. Create clear time-response benchmarks for service and undertake regular reviews to assess success.

One of the early tasks for the PG&T will be to establish, in consultation with the community, realistic and reasonable benchmarks for customer service in the area of personal guardianship. Without such benchmarks, it is difficult to measure the level of customer service. In addition, it is almost impossible to measure fairly and objectively the performance of the staff. Not only is it important that the benchmarks be established

in the first place, but the capability of the Office to meet them must be reviewed on a regular basis. In addition, the benchmarks themselves must be regularly reviewed with the community to ensure their appropriateness and relevance.

A more thorough review of activities in other jurisdictions is essential to development in this area. These same questions are being addressed in other jurisdictions, including stringent controls proposed in British Columbia to ensure the PG&T is used as a true last resort and that all other avenues are first exhausted when adult guardianship is needed. The new legislation provides for an annual effectiveness audit of the office by the Provincial Auditor, following the new standards of the Canadian Comprehensive Audit Foundation. In this respect, the Public Trustee is attempting to be a model of effectiveness for the public sector in British Columbia.

ACCOUNTABILITY

8. Offer fact sheets to clients, friends and family members about realistic expectations.

It is important that all concerned understand the process of guardianship and have clear expectations. While this approach has not been used in other jurisdictions to the knowledge of the Review Team, other programs which have refined client expectations have found it easier to meet them.

Quebec

The Office of the Public Curator in Quebec has pamphlets and booklets designed to provide information on the three models of guardianship and the role and responsibilities of that Office, including private advisors, tutors, and guardians.

Alberta

There is a self-help kit so private guardians can go to Court and obtain Court Orders without using a lawyer. The Office of the Public Trustee is preparing policy and procedure manuals for each of its areas of responsibility. These are to be customer-focused and in plain language. Under the Freedom of Information Act, recently given first reading, these manuals will be available to the public.

CLIENT-FOCUSED ORGANIZATION

9. Employ staff able to perform tasks, not necessarily staff with maximum paper credentials.

This means developing a clear sense of necessary skills in recruiting agents for guardianship. Two sets of skills appear to be pertinent:

a) skills necessary to conduct the affairs of the person should be equivalent to those involved in conducting usual household, health, and financial affairs in a constructive manner. This does not imply special legal, financial, or social work, or other technical skills but rather a broad grasp of the necessities of a reasonable quality of life. (These skills should be available to agents of guardianship on a consultation basis with central office staff.)

b) capacity for empathy, judgement, and discretion. As a substitute for the individual in making decisions, the agent of the guardian must be able to listen and identify with the wishes of the individual. Interpersonal skills and need for integrity are key in recruitment since these are unlikely to be skills which can be built through training.

At the same time, agents of the guardian must be supported by technical expertise available through the Office of the PG&T. Thus legal, social work, medical and other skills must be built-in as advice and reference capacities for the office, or available immediately on a contractual basis.

Quebec

The "techniciens en administration" who provide direct service are not professionals, but are supported by legal, medical, and social work experts when necessary.

British Columbia

The Public Trustee in British Columbia is using a model of daily life to inform thinking about the role of case managers. Rather than recruiting on the basis of paper qualifications, the applicants for this work must demonstrate a rounded set of competencies. Access to more technical skills will be ensured either through expertise in central office staff, or in the case of medical advice, on a contractual basis.

10. Delegate decisions to appropriate client contact level through strong training, manuals, leadership, and vision.

The complexity and number of decisions to be taken by agents of the guardian will require delegation. The PG&T as an individual must provide direction for these

decisions, but cannot realistically be involved in every decision. The internal messages, materials, and visions provided to staff must offer the framework for decision-making, and difficult cases may inevitably be referred for team/expert discussion, but the flexibility at the front line is essential.

Quebec

The Direction de la Protection ensures that the teams in the eight regional offices are assisted by investigators, social workers, "fiduciaries" with backgrounds in finance or administration, notaries, and lawyers. The head of each team is responsible for providing guidance to team members and linking them with expert staff required for a particular file.

British Columbia

The Office of the Public Trustee has rewritten all the job descriptions and provided staff with more responsibilities, eg. case managers have autonomy in administering estates worth up to \$50,000. Previously, the former trust officers worked under close supervision. When the new legislation on guardianship is implemented, teams of specialists will be set up around the case managers to provide advice on specific issues. Specialists may include nurses, financial advisors, psychologists, and lawyers.

CRITERIA TO ESTABLISH WELL-BEING

11. Take a holistic view of clients and their needs.

The principle of well-being presents perhaps one of the greatest challenges for the implementation of the proposed SDA. A broader and more holistic approach to guardianship of the person appears to imply an integrated office structure. In this case, as currently in Quebec and proposed for British Columbia, the traditional trustee function is subsumed under the new role of guardianship. In this model, the financial decisions regarding a person's property are seen merely as the infrastructure upon which the more fundamental choices and decisions regarding well-being can be made. Thus, the goal is to enhance the well-being of the individual to the optimum within the limits of their available means.

Alternatively, based primarily on concerns related to the avoidance of potential conflicts of interest, the functions of the Trustee and Guardian could proceed as two separate entities. In this model, financial decisions are made independently from decisions related to personal care.

Quebec

The Office of the Public Curator starts from a preventive model which focuses on individuals and their needs as an integrated whole. Rather than assuming distinct boundaries surrounding the personal care and financial decisions affecting individuals, the Office considers these as elements of total well-being. This is in part a reflection of the current director, who comes from a nursing rather than a legal background.

British Columbia

The proposed PG&T function in British Columbia also takes a holistic perspective. The Public Trustee herself comes from a social science background, and speaks of the Quebec Public Curator as a personal mentor in thinking through these alternatives. As a result, the emphasis has been on well-being with the intent to integrate the office.

Alberta

Alberta's solutions, developed in legislation approximately fifteen years ago, have not been informed by the concept of well-being. As a result, the emphasis has been on the separation of functions, and administrative isolation to protect against potential conflicts of interest.

12. Develop a high quality, reliable and consistent system of referrals to enhance client well-being:
 - a) to services outside the mandate of the program
 - b) to services complementary to the program

Agents of the guardian will inevitably be drawn into the broader needs of individuals. As a result, the capacity to refer appropriately to high quality services is essential to the nature of the role. No information from other jurisdictions came to light in this review to inform this process. However, the issues of referral have been clear in other programs reviewed here.

CRITERIA TO ENSURE RIGHTS

13. Develop protocols and procedures to respect the individual and their wishes.

As noted earlier in Section IV of this Report, in the past few years, Canada has become an increasingly rights sensitive society. One excellent illustration of what this means in practice is the debate over public guardianship. Many parents whose children have been labelled with developmental handicaps and their representatives feel that a new set of assumptions must guide our laws and policies with respect to public guardianship legislation. They argue that the Charter of Rights and Freedoms guarantees to all adults the right to self-determination and autonomy. Further, they believe that a person's inability to exercise these rights independently does not in any way make the rights less meaningful or affect his or her status, legally or socially.

To these individuals, the present system of assessing capacity is used to deny certain individuals their right to make decisions and to exclude certain people from participating as equal members of society. In its place they propose a regime of supported decision making. They argue that all adults have the right to self-determination and the right to make decisions affecting their lives with the support, affection and assistance of family members and friends of their choosing. Further, they suggest that the law must not discriminate on the basis of perceptions of a person's capacity or competence. Rather, the law must enable all adults to enjoy the benefits of making personal choices and remove the barriers to participation in community life.

On the other hand, other parents and representatives of groups see the SDA and the other complementary reforms to laws relating to mental and physical disabilities as a welcome step. To these informants, personal guardianship represents an important step forward compared to the current state of the law. By and large, these informants did not appear to be as concerned that a system of substitute decision-making would be an inappropriate constraint on the rights of individuals affected.

In the process leading up to the new SDA, the diverse views on public guardianship were extensively considered by the Fram Committee. The "Values Underlying This Report" section of the final report of the Committee discussed the Charter of Rights and Freedoms and community living through access to support. Ultimately an effort was made to accommodate the divergent perspectives on the impact of public guardianship. First, the legislation directs the court not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that does not require the court to find the person to be incapable of personal care and is less restrictive of a person's decision-making rights than the appointment of a guardian. Second, a system of rights advocacy was instituted to provide a safeguard, making supportive decision-making services appear unnecessary.

Consensus on the appropriate balance to be struck between supportive and substitute decision making has not yet been achieved. Given continuing controversies and recent developments in two other jurisdictions, the Ontario approach is seen by some as out of step with a more modern and rights sensitive approach to guardianship. This discussion is not necessarily intended to prompt review of the legislation, but at least to inform implementation with regard to the "window" presented in the last section of the legislation which appears to offer legal status to alternatives, including assisted decision-making.

Quebec

For example, in 1990 Quebec enacted a regime of protective supervision under the Quebec Public Curator Act. Under the regime, provision is made for the appointment of curators (full or plenary guardianship), tutors (partial or temporary guardianship) and advisors. An advisor may only support the decision making of the individual concerned. Unlike the Ontario SDA, this regime explicitly makes it possible to substitute only on those decisions deemed necessary.

The Public Curator can act as a curator or a tutor, but not as an advisor; however, the Office strongly encourages the use of private curators, advisors, and tutors. Moreover, an adult can designate in advance a "mandatory" who will assume the role of an advisor, tutor, or curator upon the occurrence of specified events.

British Columbia

Further, in the British Columbia Guardianship Act, introduced in the provincial legislature on June 18 1993, provision has been made for representation agreements (powers of attorney) and a guardianship regime which includes supported decision-making.

Non-profit groups, such as the Planned Lifetime Advocacy Network (PLAN), are working with the parents of individuals labelled with developmental disabilities to develop non-guardianship approaches through networks of support which assist in decisions. The networks consist of family members and friends who support the individual but do not act as substitute decision-makers. PLAN has also signed an agreement with a large B.C. financial institution which will provide low-cost estate, trust, and will planning services, so that the financial services of the PG&T will not be required.

Alberta

Alberta has a relatively traditional perspective on the role of public guardianship. It is notable, given the stress in developing the Ontario legislation on the issues surrounding the abuse of the elderly, that the chief clients of the public

guardianship system have turned out to be individuals with developmental disabilities (1064), not those elderly individuals labelled with mental impairment (203). For private guardianship, similar but even more striking proportions are found. The number of individuals labelled with developmental disability is 1,064 as compared to 3,061 labelled with mental impairment. The relative number of individuals with a range of different labels currently under public and private guardianship in this jurisdiction are indicated in Appendix I. These findings suggest that the views of individuals labelled with mental handicaps and their representatives need to be fully considered as the implementation of the SDA goes forward.

CRITERIA WHICH FOCUS ON THE COMMUNITY

13. Work in close collaboration with members of external communities through the implementation of the SDA. Strengthen this collaboration to a partnership as a means of developing the best advice for the program.

Some informants, notably members of the Bar, expressed concern about the absence of accountability which seemed to exist for the current Public Trustee and expressed concern about the wisdom of extending the responsibilities of the office to include public guardianship. They felt that at this point it was very much a question of who the office holder was. If the Public Trustee was responsive to community concerns, it reflected more a personal commitment than a institutional or statutory responsibility.

The new legislation will facilitate, to some extent, client accountability. For example, the Consent and Capacity Statute Law Amendment Act, 1992 provides the PG&T with the authority to establish a committee to advise on guardianship matters. In addition, the SDA requires the preparation by a guardian of the person, including the PG&T, of an annual report which can be made available to the incapable person.

A second issue of accountability which was mentioned by several informants and has been addressed in the SDA is a role for the PG&T in cases of abuse. It was known to a few informants that in the past the Public Trustee had successfully intervened to prevent financial or emotional abuse by family and friends. Given the perceived size of the problem the office will be expected to play a leadership role in policing the question of abuse.

Genuine effort to involve the community interested in the client population and its issues can support better client service. In contrast to traditional services, often delivered by "experts", professionals, and centralized bureaucracies, individuals and communities today are seeking greater citizen participation and accountability. These efforts to define community needs are challenging traditional hierarchies.

It would appear that accountability, from the point of view of community, now includes independent points of control in community boards, rather than or at minimum, in addition to traditional bureaucratic and organizational controls.

A balance between the demands for exclusively bureaucratic accountability or external accountability will need to found as this program goes forward. The options related to accountability are further outlined below in the enhancement section of this report, as well as the questions which need to be addressed in working with the community.

Quebec

Accountability within this system appears to be located exclusively within the administrative nexus of government. The paper burden and costs of annual audits for both public and private guardianship have been debated by clients and families as untenable aspects of this system. No independent point of community control exists within the system.

British Columbia

Accountability will be ensured by a formal evaluation of the PG&T within three years, and every five years afterwards. Community representatives and PG&T staff will participate in this evaluation. Annually, the Office will undergo an effectiveness audit from the Provincial Auditor.

An independent Board representing the community with a semi-autonomous relationship with PG&T is also anticipated. The community wants the Board to be able to act as an independent check on the system through on-going, internal review of decisions. The Board will have both government representatives appointed by the PG&T and community representatives chosen from a list of names submitted by external stakeholder groups.

As a result of these two parallel mechanisms, the proposed activities appear to strike a healthy balance between the need for bureaucratic and community accountability.

CRITERIA WHICH POSITION PROGRAM ON A CONTINUUM OF SUPPORTS

14. Offer more public education to external stakeholders, clients and community, both about the mandate of the program and about its alternatives.

The SDA addresses what is perceived to be the need of those who are seriously injured, ill or disabled to have someone else make decisions on their behalf. From informants the

Team learned that in bringing the SDA to life, public education must be a priority if the SDA is to be well understood and properly used. Different groups (health care administrators, health care givers, parents, the elderly, the disabled, and the general public) may each require different types of general information and training.

Informants want information at this point in order to begin to engage in some advance planning. Indeed, in order to avoid what could very well be an overwhelming demand for the assistance of the PG&T in the early days following the proclamation of the SDA, it is essential that public education precede the implementation of the legislation.

All informants who represented organizations indicated great interest in being involved in the preparation of educational materials. In addition, these informants expressed a willingness to be involved and to assist generally in the education process, through the distribution of written materials and the convocation of seminars and other training events.

These needs reinforce the above suggestion that an individual or team be put into place immediately to meet with community and client stakeholders on a direct outreach basis.

British Columbia

A systemic approach to public education is already underway in British Columbia through the efforts of the non-profit sector. Those concerned about elderly abuse have started wide spread consultation in communities across the province, funded both by Health and Welfare Canada and by the provincial Public Trustee. It is anticipated that the education efforts of the new PG&T will build upon the emerging networks and community groups fostered through this voluntary sector effort.

Alberta

In Alberta, the Public Guardian supports 13 agencies which offer services to private guardians. This includes information at the local area level. The Public Guardian also supports mental health agencies, mental retardation agencies and advocacy centres which are all involved in providing help to dependant adults. Many lawyers assist the public in using private guardianship. If guardianship ordered by the Court then the Public Guardian will pay the costs on the behalf of impoverished applicants. The community involvement programs' (CIP) major function is to help private guardians, the Public Guardian supplies basic information and sometimes makes referrals to the CIPs.

CRITERIA FOR COST CONSTRAINT AND ADMINISTRATIVE SIMPLICITY

15. Explore user fees for high quality services.
16. Explore the administrative flexibility to facilitate the use of fees to enhance service.

Concerns that the costs of the substitute decisions role have been drastically underestimated were repeatedly brought to the Review Team. Many of the informants, including representatives of associations and parents of individuals labelled with disabilities, as well as staff, expressed concern over the ability of the Public Guardian and Trustee to deliver the services required by the SDA. Most felt that the resources of the current Public Trustee, as well as those budgeted for guardianship, were highly inadequate. Some expressed concerns that the new functions would draw already scarce resources away from the Public Trustee.

Regulations may be made pursuant to the SDA to prescribe a fee scale for the compensation of guardians of property, including annual percentage charges on revenue and on capital. However, currently no provision is made for the PG&T or any other person to receive compensation for personal care services, either in the SDA itself or by regulation. This would appear to reflect a policy decision to not charge for personal guardianship.

One can understand why one might not wish to charge for personal guardianship services. To do so, without making appropriate provision for those without adequate financial resources to pay, would be to enshrine inequality of access. In addition, there is a difficult question to be considered as to whether or not to allow both private and public guardians to receive compensation. Finally, issues arise concerning the potential to charge fees for the review and audit of private guardianship arrangements. This is critical, since these are likely to be the major bulk of the new cases in front of the Office. Different jurisdictions have come to different solutions.

On the one hand, the Office of Public Guardian of New South Wales does not appear to charge for its services. Instead the budget of the office \$1.6 million (Australian dollars) is paid for out of the budget of the Protective Commissioner who appears to have responsibilities for the administration of the financial affairs of incompetent persons similar to the Public trustee in Ontario.

On the other hand, the Public Curator Act in Quebec and the proposed regime in British Columbia each make provision for the recovery of fees of personal guardianship services, including fees for audit. A similar conclusion has been reached by the Law Reform Commission of Australia in its 1989 report entitled Guardianship and Management of Property. The Commission noted that a 1985 draft ordinance prepared by the federal

Attorney General for the Australian Capital Territory had made provision for the Public Trustee to receive payment for his services, or in cases of hardship to waive the fee. It was the view of the Commission that generally a private guardian should be able to recover out-of-pocket expenses only, while the Public Trustee should be remunerated for services rendered.

As sensible as the arguments and concerns may be for a decision to not charge for personal guardianship services, given the current realities of government funding, the decision not to make express provisions for cost recovery with respect to public guardianship may need to be reconsidered. As noted earlier, there are a myriad of duties contemplated for the Public Guardian and Trustee. Given the current under-funding of the Office, it appears unlikely that these will be adequately funded out of the Consolidated Revenue Fund. The minimalistic level of funding currently available to the Public Trustee can not meet real standards of service today. The implication that these resources will be further stretched to meet the vast new responsibilities of guardianship is difficult to avoid.

In the event that a determination is made to employ user fees in respect of the personal guardianship role of the PG&T, there remains the question of legislative authority to charge fees and expenses. While the SDA does not make provision for charging fees and expenses for personal guardianship, it appears that the PG&T may be able to rely upon its general authority in ss.14(b) of the Public Trustee Act. Subsection 14(b) provides authority to promulgate regulations to fix fees and charges in the Office of the Public Trustee and the application and disposal of the same. Pursuant to this general authority the PT has established various fees and charges for services pursuant to the Mental Hospitals Act and the Charities Accounting Act, as well as application fees for various corporate applications.

In the event that fees are to be charged for personal guardianship services provided by the PG&T, the question then becomes whether or not the PG&T can access this revenue source to enhance service provided to clients. Under the current rules, the revenue could not be accessed directly by the PT. What is being suggested is that given the significant and as yet undetermined funding requirements of the PG&T's role in personal guardianship, it may be appropriate for user fees to be available to the PG&T as part of an effort to give the PG&T adequate administrative flexibility to provide a satisfactory level of client service.

It is unlikely that the fees raised would cover fully operating expenses for PG&T personal guardianship services. However, combined with any operating surplus realized from delivering trust administration and crown estate services, the extent of the subsidy which government may be required to make should be considerably reduced.

Access to the user fees is one issue which could be addressed by providing the PG&T with additional administrative flexibility. At the same time, there is a need to ensure that the PG&T has the administrative flexibility necessary to obtain and maintain adequate resources to deliver its statutory responsibilities free from government constraint exercises of general application which have starved the PT of resources at a time when the office is by any measure considerably under resourced relative to its responsibilities.

The desired administrative flexibility could be achieved in a number of ways. The simplest approach from an administrative perspective would be for the PG&T to arrange for waivers from certain Management and Treasury Board guidelines and directives. In practice this would mean some form of agreement with Management and Treasury Board. The application of the general estimates process to the PG&T would be replaced by an annual business and financial planning process in which the PG&T would work co-operatively with the Ministry of the Attorney General and Treasury Board. The PG&T would present an annual business plan which would include annual revenue projections and outline service and expenditure requirements. If projected expenses exceeded revenues, the plan would be used to negotiate an operating subsidy. If the plan forecast a surplus, the plan would identify the portion of the surplus which was to be contributed to the Consolidated Revenue Fund. Whatever the actual revenue and expenditure position might be, the accepted principle would be that the PG&T should be able to access all revenues generated from client sources to deliver services unless revenues clearly exceeded the needs of clients.

Once the annual plan had been agreed to, any material additional spending would require Treasury Board approval. In practice, during the period of relief, the PG&T would be free to hire, for example, needed staff regardless of government-wide staff reduction exercises or other hiring constraints. In addition, the PG&T would be able to purchase, for example, needed information technology hardware, despite government wide spending freezes or more recently the Ministry's expenditure control plans.

After a preagreed period of time, the arrangement would be reassessed with the assistance of an independent appraisal which would measure the extent to which the PG&T would be able to cope with the application of the Management and Treasury Board directives and guidelines from which relief had been granted. The relief would be revoked only if the assessment showed that the PG&T had achieved sufficient resources available to it to meet and exceed projected demand for services for the foreseeable future. However, even if the relief was to be revoked at that point, the basic principle that the PG&T should have access to resources at least equal to client fees should be maintained, particularly since the resources needed to properly fund the activities of the PG&T are likely in any case to exceed client fees from all sources.

There are other alternatives which could be pursued to achieve additional administrative flexibility for the PG&T. However, they would probably accomplish a greater degree of administrative independence than is needed. One alternative would be to seek to have the PG&T designated as a "special operating agency". This concept, employed in the Government of Canada, fosters greater managerial responsibility and accountability on a cost recovery basis. A second alternative would be to formally redefine the administrative status of the PG&T from a branch to a separate Schedule III or IV agency.

The issues of funding and accountability are tied. While they may not be appropriate for review through the current implementation stage, they are likely to be continuing issues for this Office.

Quebec

The Office of the Public Curator is autonomous and it is self-financing through the fees charged and through the return of a percentage from the investment of the collective portfolio to the Office of the Public Curator. Two and one quarter percent of the collective portfolio is returned to this division, that is approximately \$235,000.

The collective portfolio is invested at an annual return of 12% to 13% and 2 1/4% of that annual return of 12% to 13% will be returned to the Office of the Public Curator in order for it be a self-financing, autonomous Office. The difference between the return on the investment and this 2 1/4% is paid into the account of each of the clients of the Public Curator. Funds are not frozen and interest is placed in the accounts every three months.

In the last five years, the collective portfolio has had better returns than the returns on five-year term deposits. There is no money received from the Treasury Board to fund the Public Curator. The Public Curator is completely self-financing. It has accumulated reserves of \$20 million.

However, the law has recently changed and as of 1993 or 1994, the Public Curator will return a yet-to-be-determined amount to the Consolidated Revenue Fund. However, the Public Curator has warned the Government that it will need an annual budget if its accumulated reserves are so lowered that it is no longer possible for it to be self-financing.

The funds of all persons are pooled in the collective portfolio for investment; however, if a client's accounts and investments are already with a particular bank or if the client already has long term deposits, those will not be disturbed.

British Columbia

The legislation announced on June 18, 1993 continues to provide for a cost-recovery basis for guardianship within the Public Guardian and Trustee as a Crown Agency. It is anticipated that these activities will be self-financing.

Alberta

The Public Guardian is under funded and under staffed. In total, the office has 22 professional staff; therefore, the staff/client ratio is 75/80 to one client. Referrals for guardianship are 85 clients to one staff member. Under private guardianship it is 500 to 600 clients to one staff. It should be noted that the Public Guardian administers all Court Orders, even for private guardianship. Resources are a chronic problem for that office.

The PT administers a \$200 million common fund which includes the trust fund for the Administration of Deceased Estates. However, they do not draw on this money, and are administered as part of the government allocations process. Proposed amendments to the Financial Administration Act mean that the Office of the Public Trustee would be operating with a very different budget and ability to charge fees.

BROADER CORPORATE CRITERIA

17. Recognize the important public service involved in providing trustee and guardianship services as part of a broader commitment to clients and communities within the Ministry of the Attorney General.
18. Recognizing that the scope of the directorship of the PG&T includes a holistic vision of the client, recruit on the basis of the full range of required skills and abilities.
19. Support the director of the PG&T in developing a strategic client-focused service vision for the Office.
20. Deliver local services appropriate to service requirements, not by developing regional administrative sites.
21. Develop an innovative, responsive, organizational learning culture in the Ministry to support the client-focused service in the Office.

Commitment and leadership to client-focused service will be necessary to implement a public guardianship role. Without "top-down" ownership of the change process, individual program innovations undertaken in isolation are likely to end in frustration and failure. Given the real and persistent structural barriers to change in any organization, this commitment needs to be brought from the level of discussion to the level of action.

The corporate priorities for service need to be incorporated into the operations and systems of the Ministry, offering programs the essential support required in undertaking the arduous and risky business of reform.

These include the extent to which existing programs and options contribute to or complement the existing priorities of the Ministry, other ministries, and the government as a whole, including related programs, cohesive organizational operations, regional simplicity, and the creation of management culture capable of constant improvement.

It is essential that linkages be built, both with services with other ministries which provide services to these same clients, eg. Advocacy Project, Long Term Care Initiative, Social Assistance Reform, Children's Services, and others.

High-profile outreach and public education surrounding the new PG&T as a "signature pieces" of government must be conveyed to community and client stakeholders. This does not assume that individuals will become clients of the Office, but rather that only by positioning the Office clearly on the broader continuum of supports and conveying that position to the public, will these objectives be achieved.

To be fully part of the Ministry, the Office must also coordinate with other programs and areas in a shared vision of mutual respect. This is consistent with broader corporate goals of coordination and integration within the Ministry, in which programs work together to place the corporate good over their sectorial and territorial interests.

In order to work effectively with the current streamlining of regional operations in the Ministry, that is to avoid repetitive or overlapping regional presences, it is important that the local presence of the office be thought through clearly, with a clear justification of the service requirements of local operations. These issues are dealt with in greater deal in the architectural options which follow.

Finally, in meeting corporate objectives to develop a progressive and innovative management culture in the Ministry, the new PG&T needs to develop an organizational vision which facilitates learning, informs innovation through front-line involvement, reduces management layers, and empowers staff at all levels with real responsibility. As with other programs, this may include "360 degree" performance appraisals from staff to managers, flexible, transparent, and accessible decision-making, promotions based on client service merits, and other elements.

VII. CROSS PROGRAM ANALYSIS OF SIMILARITIES AND DIFFERENCES

MANDATES

The programs under review serve very different mandates. The Office of the Public Trustee is intended to serve as a "last resort" in those circumstances or occasions in which individuals in need have no other alternatives to provide either administration of financial matters or legal representation. This same intent, with the additional responsibility of monitoring and facilitating arrangements for powers of attorney, or "private" guardianship, underlies the Substitute Decisions Act which will lead to an Office of the Public Guardian and Trustee.

The Office of the Official Guardian, often described as a program of "last resort", has a more complex standing. In most cases, the court, not the program, decides whether or not a child will be offered the legal services of the office. This decision is generally the result of a dispute among parties who might otherwise be responsible for the child's legal interests, not because no other alternative is available. This program is a true last resort only in certain property rights and child protection cases, and for the substitution of decisions relating to treatment for psychiatric patients.

Other programs, particularly the Family Support Plan as a mandatory agency to collect court ordered payments, come closer to being "first resorts". That is, they serve consistent and neutral replacements prior to individual considerations of the capability of clients to cope through other alternatives.

Finally, the Victim/Witness Assistance Program, the Criminal Injuries Compensation Board, and the Supervised Access Pilot Project are all intended to provide additional support to clients who are primarily responsible for their own affairs. Each of these programs supplements rather than replaces other alternatives.

In terms of potential of overlap in jurisdiction across these programs, only the Official Guardian and the Public Trustee might be seen to potentially address the same client needs. In fact, however, these offices do not duplicate services. While they in some cases perform similar functions, they are addressed to different client groups. Please refer to Appendix H where the legal responsibilities of the two Offices are set out. The one questionable area of jurisdiction concerns mentally incompetent persons. Currently both the Official Guardian and the Public Trustee have statutory responsibility for these individuals, although the OG to a lesser degree. With the advent of the Substitute Decisions Act, some of OG's clients will come under the care of the Public Guardian.

The recommendations above have suggested that the responsibility for representing mentally incompetent persons be statutorily moved to the Public Guardian and Trust Office.

It was noted that implementation of this recommendation would not only improve accessibility to the two Offices and remove any possibility of an overlap in jurisdiction but would address a potential conflict that has arisen between the Offices with respect to representing mentally incompetent clients in certain estate matters. As discussed earlier and referred to in Appendix H, this potential conflict is currently handled by a protocol between the two Offices.

In terms of "mission statements", the programs under review have made only limited reference to these popular statements of mandate, either in conveying an image of the organization to staff, to other elements of the Ministry, or to clients and communities.

The reporting relationship of these Programs across the Ministry varies as well: the Official Guardian and the Public Trustee, report to the Civil Law Division; The Family Support Plan reports to the Courts Administration Division; Victim Witness reports to the Criminal Law Division; Supervised Access reports to the Probation and Development Division; and Criminal Injuries Compensation Board reports to the Finance and Administration Division. In most cases, these programs have a very low profile within these Divisions. Most of them characterize themselves as "orphans" within the current divisional context. In some cases, namely the Victim/Witness Assistance Program and CICB, the Program Director is not even on the Divisional management team.

ACTIVITIES

Given differences in mandates, no formal comparison of the activities of these programs has been developed. The services offered by these programs differ in degree of direct client interaction, and in their ways of achieving this interaction. In some cases, decisions are made for clients and "service" refers to information sharing or to activities carried out under the mandate of other government areas. The Family Support Plan, for instance, collects monies which directly affect client well-being, but it has no role in determining the amount of payments to be collected. Its contact with clients involves distributing cheques, gathering information to facilitate collection, providing information about the program's effectiveness in collecting monies due, or, with regard to payments, receiving monies. Thus, while a degree of client contact is essential to fulfilling its mandate, the contact revolves largely around the transfer of funds or information. For these reasons, as suggested above, the program could function under a largely transactional model, rather than through developing close relationships with clients.

Other programs hold responsibilities which require direct and personal client contact in order to achieve their mandate. In these cases, services include either decisions which affect clients or personal support to distressed clients. The Public Trustee, for instance, makes decisions about the medical and financial affairs of its clients. In terms of its mandate with respect to substitute decision-making for psychiatric patients, the Official Guardian similarly decides in the interests of clients. Further, it supports the court to make decisions about the personal care and property rights of children by representing them or their best interests through litigation. Provision of Victim/Witness Assistance appears to serve both as a direct support to clients and as an indirect support to the Crown in the interest of prosecution.

Even in these cases, however, the degree of contact and service to clients also varies within programs. The Public Trustee may or may not directly contact clients in making decisions. Lawyers appointed by the Official Guardian may or may not work closely with their child clients. Providing Victim/Witness Assistance may imply a direct service in some local sites, including an open, and relatively intimate understanding of the client's psychological state. However, in some areas, this program may also be organized as a coordinating service to community Victim/Witness supports, thereby facilitating rather than duplicating local community services in other sites.

The activities of these programs are carried out very differently with respect to regional access. While the Official Guardian, Public Trustee, and CICB have no regional offices, only the Public Trustee is wholly centralized. The Official Guardian provides regional access through a system of agent and panel lawyers. The Criminal Injuries Compensation Board travels to local sites to hold hearings. On the other hand, the Family Support Plan, Victim/Witness Assistance, and Supervised Access all operate on the basis of local offices. These offices are not, however, located with any consistency. In the service of these vulnerable populations, the Ministry is operating with three different regional site descriptions; the Family Support Plan has eight; Victim/Witness, thirteen; and Supervised Access fourteen sites. While some overlap occurs, this is purely coincidental.

The ways in which local activities are supported are varied. The Family Support Plan's regional operations house a range of staff layers, including administrative supports. Its Central Inquiry service also involves a separate office. As contracted services from the Ministry, the Supervised Access Pilot Projects rely on the administrative support of the agencies in which they are located. The Victim/Witness Assistance sites have local administrative support, but currently operate with only minimal central support in training, policy, and other capacities. Thus, these regionalized programs share no consistent pattern in terms of centralized control, either in terms of regional accountability or in terms of organizational layers.

For the purposes of this review, no comparison of these programs in terms of relative budgets for client service seems feasible. The kinds of service provided vary sufficiently

to make this comparison superficial at best. A case and its requirements are considerably in terms of the extent of contact, the skills required, and the kind of technological and administrative support which may be required to achieve a program's particular mandate.

CLIENT-FOCUSED DESCRIPTIONS

Clients of each of these programs have the potential to be clients of other programs. No statistics are currently available on the degree of overlap across these client groups, but contacts with external stakeholders in the community for the purposes of reviewing one program often led to discussions on the total scope of programs under review. For instance, the Native Women's Organization, contacted with regard to their experience with the Victim/Witness Assistance Program, wished to get on record their experience with the Official Guardian. Likewise, those contacted with regard to the Office of the Official Guardian were just as likely to comment on the Public Trustee function, or offer views on the forthcoming legislation on Substitute-Decision Making, perhaps because of the sense that this program opened up potential for controversy.

These overlaps in client groups are explained in part by the relationship between demographic position and societal vulnerability. Thus, the population of single women with children who are clients of the Family Support Plan may be likely clients of the Victim/Witness Assistance and the Official Guardian for two related reasons: first, as women they are more likely to be victims of domestic violence, the stated focus of the Assistance program, and second, due to economic vulnerability, their children are more likely to require the services of the Official Guardian when legal advice is needed. The clients of the Victim/Witness Assistance Program are also likely to be clients of the CICB. Other existing or potential relationships can be explored among the clients of the Public Trustee and other programs, particularly because the vulnerabilities of age, isolation, handicap, and other factors for these clients may also make them likely victims of violence.

TRADITIONAL CLIENT SATISFACTION INDICATORS

Given the range of activities, no standards of direct client contact will be generated for the purposes of this review. It is possible, in fact, that optimal service may require relatively little contact if a service is either largely transactional or plays chiefly a coordinating role for services and supports in the community. What does stand out in terms of ability to meet needs is that the reputations of these programs with regard to client service - their track records inside and outside of government - vary dramatically.

Across the range of client indicators, particularly in terms of achieving mandates and addressing client needs, room for improvement exists for every program. None of these programs have mechanisms in place for on-going client research.

As suggested above, the Office of the Official Guardian and the Victim/Witness Assistance Program have somewhat greater credibility in the community in terms of providing service to clients. This has taken considerable effort on the part of the Program Directors and staff. In the first case, it has meant determining client standards and achieving them. In the second, it has been based on the kinds of relationships which site coordinators have developed in local communities. The capability of the programs under review to deliver responsive, flexible, timely, accessible and accountable service also varies widely. As will be discussed below, the achievements of programs in addressing these issues has involved isolated efforts, rather than a systemic approach on the part of the Ministry.

Importantly, the findings suggest that current regional structures are not necessarily meeting the optimal needs of clients. Despite eight regional offices, the FSP remains inaccessible to the majority of clients. The larger share of client needs are addressed through Central Inquiry. Similarly, the limited number of regional offices in Victim/Witness Assistance and Supervised Access are not able to provide accessible service across the Province. The most accessible services appear to be those that do not necessarily locate themselves regionally through an actual office. Thus the panel and agent lawyer systems of the Official Guardian have been able, without building a regional empire, to effectively use the services of private sector lawyers to achieve these same results.

CLIENT-FOCUSED ORGANIZATION

The organizational cultures and commitments within these programs have had very dramatic impacts on their ability to deliver quality client service. The Victim/Witness Assistance Program and the Official Guardian, organizations with more supportive and team oriented cultures, offer higher levels of service in the eyes of the community. The ongoing operational review in the Public Trustee has described in detail some of the cultural hurdles to better service in that organization. Its problems have been exacerbated by the lack of delegation of responsibility in the organization, a problematic physical location, and conflicts internal to the organization.

As a rule, the degree of client service seems to be directly related to the capacity of the program director and senior managers to operate in a consultative, open, and flexible manner, to reward performance and offer constructive feedback. This has been a difficulty at the Public Trustee, and one which has apparently been overcome in recent months at the Family Support Plan. An adequate physical environment, equipment, and

reasonable working conditions appear to enhance staff morale, and lead to organizations better able to respond to changing client needs. These have been particular difficulties for the Public Trustee and the Victim/Witness Assistance Program. As staff have been involved in the changes confronting them, both in terms of seeking their advice and in terms of explaining the impacts of decisions directly to them, they have responded well over the long run. The principles set out in the criteria, including mutual respect, consensus building, openness to staff complaints and suggestions, frequent consultation, information sharing, and problem solving with unions are all fundamental to organizational change which can underpin better client service.

The findings of this review suggest that training and staff development have been underemphasized even in the programs with positive cultures. Appropriate and continual training at all levels of these organizations must be offered as an investment in the program's future and in the interests of longer term gains in efficiency, effectiveness, and client service.

However, even the best management practices in the world will have little impact if staff are asked to meet unrealistic expectations. The problems of inappropriate caseloads and poor policies and procedures, as described above, must be addressed hand and hand with organizational change. All programs, with the exception of some supervised access sites, faced excessive caseloads.

On the basis of findings in these programs and across other jurisdictions, it is clear that some individuals will not be able to adapt in the emergence of client-focused organizational cultural. In these cases, a degree of staff turnover may be necessary to developing better client service.

CRITERIA TO ESTABLISH WELL-BEING

Well-being is a relatively new concept, one which has yet to inform most elements of public policy development or client service. For the purposes of this review, it has been used to assess the degree to which programs demonstrate an understanding of the broader needs of their clients, by empowering them and by referring them to other services.

The programs under review vary a great deal in terms of their efforts to keep clients informed. In some cases, the messages are mixed in that clients are offered a working partnership, but at the same time told not to expect early or individual responses to their requests. At present, only sporadic attempts have been made to involve clients in setting or changing service standards.

Overall, most of these programs seem to have been ambivalent about their role in referral of clients to other services. Most programs attempt to refer upon first contact, offering clients alternatives when requests fall outside of their mandates. The Victim/Witness Program, for instance, provides referrals which support clients in receiving complementary services and supports. However, the general consistency, quality, and reliability of referrals has not been addressed in any of these programs. Referral lists are not screened, and the likelihood and value of referrals seems to be left largely to individual program staff. This same finding holds true across those programs that engage in referral. Other programs, including the Public Trustee and the Supervised Access Pilot Projects, seem to have completely ignored the broader responsibilities of program referral.

CRITERIA WHICH ENSURE RIGHTS

These programs have differed widely in terms of practices related to client rights. Some programs have taken a very active view of need to treat clients as full persons, explaining rights and ensuring that the conditions exist for people to exercise their rights. To do this well, a program must keep current with case law regarding rights of individuals and make efforts to incorporate current understandings of rights into their operating procedures, including staff training regarding new understandings of rights. The program which has best moved in these directions is the Official Guardian. The FSP media campaign also promote awareness of family support obligations as a legal, economic and social imperative. Other programs do much less related to client rights.

None of these programs have undertaken special efforts to ensure that they are providing services to all charter groups. Personnel in some programs are only beginning to be trained in order to respond in ways which are specific to the needs of racial or ethnic minorities, or to recent immigrants whose first language is not English. All programs need to seek ways to encourage all eligible clients to use the service, ensuring both equity of access and equity of outcome for clients.

In terms of protecting the rights of individuals, both from abuses from the state and the family, the mandates of most of these programs are to some degree based on this factor. In many cases, however, the programs have not instituted internal safeguards to ensure that clients' rights are not abused by the service itself.

CRITERIA WHICH FOCUS ON THE COMMUNITY

Only limited consultation with a broader range of external stakeholders, either in advisory or decision-making roles with regard to these programs, exists. Not a single program has a regionally representative advisory committee to help in policy formulation, public

education, or other elements essential to community and client service. In the case of the Official Guardian, this has been the result of cost constraint rather than a strategic decision. Nevertheless, all of these programs have operated in relative isolation from external stakeholders, often with the personal contacts of directors or others as the context for discussion with the community.

Overall, the lack of involvement of community and citizens reflects a general lack of clarity about the most appropriate relationships outside the Ministry. These questions are ones that confront all public sector programs in the current environment. With pressure for more customized and responsive services growing, questions surrounding mechanisms for community accountability and flexibility have emerged. In Ontario, as suggested in the introduction to this report, the Ministry of Health in its Long-Term Care Initiative is the premiere example of the effort to engage external stakeholders and create more integrated services.

These questions similarly face the programs under review here. At a minimal level, this report has recommended that programs develop Advisory Committees to support program operations. The broader questions of accountability at the community level, including the use of community boards as independent points of responsibility for these programs and questions related to citizen and client participation, must be examined as part of a long-term strategic view of the Ministry in relation to the community. These issues are discussed in terms of checks and balances in Section X of this report.

CRITERIA WHICH POSITION PROGRAMS ON A CONTINUUM OF SUPPORT

Given changing political imperatives, shifting client expectations, emerging technologies and changing demographics, service programs need to be dynamic, not static, in defining client needs. Without a broader vision of client service, it is not surprising that common difficulties have been discovered for each of these programs in terms of focusing on the central service requirements of the business they do. In focusing the mandate on the activities of the program, it is important to position the program realistically in terms of the broader continuum of supports available to clients. This means that gaps in services, overlaps, or activities which overstep the mandate of the program can be avoided.

In the individual program recommendations above, different remedies have been prescribed for each of these programs in order to clarify and bring forward a sharper, realistic image of program objectives and activities to clients and community. Depending on the mandate and the current state of program activities, these have included in some cases: developing a more transactional model for the Family Support Plan, shifting to a coordinating role where appropriate for Victim/Witness Assistance, changing the mandate of the Office of the Official Guardian to convey its role, and seeking more client contact in the Office of the Public Trustee. Similarly, the recommendation to focus the r

of the Criminal Injuries Compensation Board on victims of childhood abuse stems from its administrative backlog and limited resources.

In terms of relationships to other supports and services on the continuum, none of these programs has played a strong leadership role. External contacts, consisting largely of training for the Bar in direct contact with the program, have been developed by both the Official Guardian and the Family Support Plan. Family Support has also engaged in leadership through its media campaign on the importance of child support. The rest of these programs have operated in relative isolation to the outside world.

COST-CONSTRAINT AND ADMINISTRATIVE SIMPLICITY

The funding bases of these programs varies a great deal. The Victim/Witness Assistance Program is funded by the Ontario Women's Directorate under the auspices of its sexual assault program. A proposal is in process to fund program expansion through the Ontario Victims Fine Surcharge. The Criminal Injuries Compensation Board, Supervised Access Pilot Project, and Office of the Official Guardian are funded by the Attorney General through the Consolidated Revenue Fund. The Office of the Public Trustee and the Family Support Plan, while formally part of the Consolidated Revenue Fund and the Ministry's allocation, in fact recover monies greater than cost to government. The Public Trustee has historically generated revenues on a fee-for-service basis in excess of its expenditures. The Family Support Plan collects more than its cost - it receives a fixed amount, but returns an amount equal to approximately one-fifth of its total cost to the Consolidated Revenue Fund as part of the recovery of social assistance benefits.

In terms of administration, these programs work as separate entities. Even in the cases where programs operate out of regional court offices, they have their own support staff. Little has been done to develop economies of scale, either with the broader divisional placement of these programs, or across other service-focused programs.

BROADER CORPORATE CRITERIA

While all delivered within the Ministry of the Attorney General, these programs have widely different profiles in the Ministry. One, the Family Support Plan, has been identified as a "signature program" of government and therefore a priority program for development in the Ministry. The Public Trustee, on the other hand, has been close to invisible and almost marginalized in the Ministry. The Office has cultivated an image as separate and unique, but has lost opportunities for broader understanding and support in the ministry. Victim/Witness Assistance staff feel lost in the shuffle, as if they are never acknowledged for the work they do or placed in priority position in either their Division or the Ministry.

Working in isolation, and unsupported by a broader Ministry articulation of principles, or by a culture which supports their efforts or seeks creative change, programs have been hindered in their ability to focus on client service or to foster creativity. They have not developed cross-program links within Ministry.

Thus, in delivering client service, they have been unable to develop responsive flexible interpretations of their mandates, to constantly revise, improve, and innovate in response to changing client needs. When they have succeeded to differing degrees, it has been as much the result of determination and good luck, rather than the consequence of strategic intent on the part of the programs or the Ministry.

By the same token, these programs have developed few links with broader government programs or priorities. Some of the current program proposals for cuts in the recurrent expenditure reduction exercise suggest the extent to which these programs have not taken into account priorities for client service in the government. Similarly, in responding to the Shared Accountability Framework to Cabinet Office, little emphasis has been placed on ongoing customer research or government-wide objectives.

VIII. ARCHITECTURAL OPTIONS WITH STRENGTHS AND WEAKNESSES

This section of the report presents architectural options for program reform. Depending on what had been defined as the fundamental service requirements of each program, the Review Team considered structures that best appeared to suit those needs. These options include a range of different suggestions vis a vis regional operations, staff requirements and management layers.

They also include recommendations which present different images of the central service requirements of some of these programs and suggestions for implementing "best service" standards. For this reason, some of these options assume very different kinds of activities for these programs, and have very different costs associated with them.

After considering the options for architectural reform of these individual programs, this section considers options for Ministry-wide restructuring which would place these programs within a single new division intended to deliver "community services" for the Attorney General.

A. FAMILY SUPPORT PLAN

Three options put forward by informants during the course of the review which have not been developed in detail. These options as described below proved infeasible on early analysis:

1. Move to the Ministry of Community and Social Services (MCSS)

Many informants could recognize MCSS as a major client and stakeholder in the mandate of the Family Support Plan program. Indeed one third of the cases with FSP are assigned to MCSS and the issue of receipts returned to the Treasury is a main order of business.

Beyond these surface observations however, there were no valid reasons for looking further at this option. Everyone agreed that to mix the mandate of MCSS with collection and enforcement was a negative step. Many were of the opinion that MCSS have not had a good track record for collecting money. Some informants thought a move to MCSS would create a potential conflict of interest

in that the client/recipient and enforcer would be the same body. Others thought such a move would put a stigma of welfare on the program and engrain the idea that someone else will pay for support of children. This attitude could result in a move away from the goal of recognizing child support as an individual obligation of any parent.

2. Privatization Model

The Family Support Plan program is a "signature piece" for government. Informants felt that to move it out of government was likely to inhibit the effort to raise the social conscience of the importance of support obligations. Recipients want government to play a strong role in fighting against child poverty. A move away from government may compromise the opportunities to provide the attention that is still needed in this area. The efforts of government in this area were also seen as a fit with the government's agenda on women's issues. Consequently this option was discounted.

3. Move to Government Collection Agency

Informants thought that a move to the central collection agency would be a premature option. The state of the policy in this area does not lend itself to focusing on merely the collection aspect. This is an option that could be seriously considered once the impact of the legislative reform and the improvements included in this report are known. It is hoped that the improvements will position the program closer to a focus on collection. The efforts of leadership and public education and awareness of the importance of the obligation of child support would need to continue outside of the collection activity.

FSP OPTION I: Enhanced Status Quo Model

This model maintains a head office, eight regional offices and a Central Inquiry office for the FSP program. Enhancements are described in detail in the recommendations section of this report. These include:

- further improving Central Inquiry to increase the ability to respond to clients in a timely and accurate manner
- introducing new policies, procedures and legislation to reduce backlog/volume of workload, increase equitable enforcement and enhance accountability and responsiveness to clients
- increasing public education and awareness to foster client rights
- conducting an operational review to re-position the resources as a result of improvements in the processes and technological opportunities.

Strengths

The improvements will result in increased efficiency and effectiveness of program operations. These measures will result in better client service by:

- increasing the possibility of collection in more cases and therefore meeting the needs of clients
- improving on the accountability, responsiveness and flexibility, and timeliness of the service through reductions in backlog and volume of workload
- helping to foster the rights of individuals through public awareness
- increasing accessibility and responsiveness to clients through improvements to Central Inquiry.

Maintaining the regional office structure provides a presence for the MAG across the province. This supports the public view that the government is taking leadership on the issue of support obligations as a means to reducing child poverty.

Weaknesses

Maintaining the regional office structure, maintains the pull of the program to provide personal contact at the risk of reducing its ability to focus on the collection of support. This fails to resolve the current priority confusion between collecting support order payments (transactional service) and listening to clients (relational service). The collection of support is the ultimate outcome wanted and needed by recipients.

FSP OPTION II: Decentralized Case Load Model

This model emphasizes the relational aspect of the program. The head office, eight regions and Central Inquiry office structure will be maintained. Individualized service will be offered to clients through an identified client service representative. It will be necessary to at very least redeploy, if not expand, resources to accommodate the increased accessibility and accountability to clients. This model would also necessitate a review of the qualifications needed of staff to carry out the job requirements.

This model assumes that enhancements will be made in accordance with the recommendations outlined in this report:

- further improvements to Central Inquiry
- introduction of new policies, procedures and legislation
- increased public education and awareness
- completion and implementation of an operational review.

Strengths

The same comments apply in this model as in the enhanced status quo model in regards to the increased efficiency and effectiveness, and the regional presence for the MA.

The establishment of identified client service representatives permits the clients to contact the program in a very direct manner and speak to the person who will take action on his/her behalf. This establishes a very direct accountability to clients. It also presents an opportunity to expand staff responsibility, increase job satisfaction and thereby enhance customer service.

Weaknesses

Without full implementation of all recommendations, it will not be feasible to free up resources and redeploy them in the area of client representatives. Furthermore, the backlog and volume need to be reduced to allow a more reasonable caseload size for client representatives.

The development of a more relational model pulls the Program focus to personal contacts and greatly risks the ability to maintain collection activities.

FSP OPTION III: Hybrid Model

This model emphasizes the transactional aspects of the FSP program. It assumes that there is no need for a regional office structure. It builds on the current direction to centralize financial, and trace and locate functions. The model relies on an improved telephone inquiry as the main information outlet for clients. It also maintains decentralized legal services and use of panel lawyers. As in the previous two models, enhancements should be made in accordance with the recommendations outlined in the report:

- introduction of new policies, procedures and legislation
- increased public education and awareness
- completion and implementation of an operational review.

Strengths

The same comments apply in this model as with the others in regards to the increased efficiency and effectiveness of the Program.

The elimination of the regional office structure permits a redeployment of resources which will result in a more administratively simpler and cost efficient organization. Resources will be directed to doing the right things, not just doing things right.

The focus of activity on collection will result in outcomes that meet the needs and wants of recipients.

Weaknesses

The weaknesses of this model are implementation hurdles only and not inherent weaknesses of the model.

In the short term, it will require implementation commitment of relocation of staff; hiring and training; new premises; working out new processes for provision of legal services.

In the short term, it may reduce the public's perception of government's commitment to the program as it becomes more of a transactional service

In the longer term, attention to the public awareness function of the program will enhance the perception of the governments's willingness to take a leadership role and continue its commitment to the issue of support obligations.

B. SUPERVISED ACCESS PILOT PROJECT

Since the Supervised Access Pilot Project was not reviewed in detail, no options are suggested here. However, some questions are presented below which should be kept in mind when considering the Project.

Are these services a better fit within the MAG?

Should the service be provided through Children Aid's Societies as part of their child protection mandate? Would most families tolerate the stigma that is attached to a CAS?

Are these services a good fit with the Ministry of Community and Social Services? Many of the sites are currently attached to agencies which receive the bulk of their program funding through MCSS. Could supervised access be placed as another service within the context of service contracts with MCSS? This may have advantages from an administrative point of view for the government. It may also have a positive impact in placing these projects within a continuum of community services.

C. VICTIM/WITNESS ASSISTANCE PROGRAM

OPTION I: Singular Program Objective, Coordinating Role with Community Providing Direct Service to Victims

Program will have a singular mandate to facilitate the provision of comprehensive services to victim/witnesses. The focus will be on services to the victim to enhance their

understanding and participation in the criminal justice system. Impacts on prosecution will be an indirect benefit.

Victim/Witness Coordinators will move away from direct service delivery, as determined by customized local protocol, to become facilitators, planners and advocates of services to victims. Their main functions will be to link victims with community programs, facilitate development of community programs and coordinate for victim during court proceedings.

A Provincial Advisory Committee comprised of internal and external stakeholders chaired by the Provincial Coordinator will be formed within a reasonable time frame.

The Advisory Committee's initial task will be to develop a Provincial Victim/Witness Protocol as soon as practical in order to standardize and clarify roles and relationships, level of service, and information flow as well as to ensure referral into the program at earliest point.

Its overall mandate will be to ensure a consistent level of services across the province through adherence to provincial protocol, customized to local needs. It will also act as a continuous conduit of best practices, suggestions and ideas from the sites to the Provincial Coordinator for policy and procedural development.

Specifically, the site Coordinator will, on the basis of local needs determined through consultation with community agencies, adapt the provincial protocol into a customized draft local protocol which will be forwarded to the Advisory Committee for acceptance or adjustments.

The presence of the Advisory Committee will provide a framework, safeguard and legitimacy for the local site Coordinator.

Program Coordinators will be responsible for the development of an extensive volunteer training program. Volunteers from community agencies would participate in the training and provide specialist direct service to the agencies' clientele.

This option will develop formalized "information sharing" agreements with Crown Attorneys, police forces and Courts Administration personnel to allow program (community delegate) access to case information at earliest point.

It will be necessary to start policy development on enhancement of program to program charge. With change in focus, Coordinators will be freed up to assess program enhancement possibilities at local level to feed to Provincial Coordinator for policy development.

Ministry will give Provincial Coordinator permanent and recognized standing in Divisional management team and equal access to the Divisional central services.

Strengths

Increases community stakeholders' confidence in the Program's ability to focus solely on the victim.

Enshrines confidentiality for victim.

Adheres to government direction of dealing with a community problem within the community.

Reduces the risk of conflict of interest between the victim's needs and the prosecution's needs.

Reduces role strain for the program.

Encourages policy development on pre-charge services.

Ensures greater consistency in post-disposition service to client because of linkage with community agencies.

Standardizes level of service and encourages more uniform outcome.

Weaknesses

Unless the Senior Management of the Ministry of the Attorney General formally acknowledges and supports the Victim/Witness Assistance Program as an equal, necessary and valued program in the criminal justice system, this option will not realize its potential.

Unless the Ministry makes sufficient base funding available for expansion of the Program across the province to provide equal access to a minimal level of service to victims in every court jurisdiction, this option will not realize its potential.

The Program transition may hamper direct service delivery to victims in the short term unless additional resources are available. This is outweighed by the long term benefits of an empowering, continuum of complete service delivery.

This will be seen as risky by Program staff, Crown Attorneys and police because it may temporarily marginalize the program by weakening the direct supportive relationship with the Crown Attorneys and police.

Needs to be carefully positioned in order to avoid redundancy with community supports or gaps in service if less direct service funds are available to communities.

V/W OPTION II: Status Quo with Improvements

Program will continue to enhance its centralized administrative, corporate and functions. Decentralized service delivery would continue in courthouses.

Ministry will give Provincial Coordinator permanent and recognized standing on Divisional management team and equal access to the Divisional central services.

Ministry will develop provincial policy on the issue of Program access to facilities

Strengths

- Formalizes Program's standing in the Ministry with a clear, precise set of functions.
- Facilitates Program's ability to sensitize internal stakeholders to the needs of victims.
- Provides smooth access to central services.

Weaknesses

- Unless the Senior Management of the Ministry of the Attorney General formally acknowledges and supports the Victim/Witness Assistance Program as an equal, necessary and valued program in the criminal justice system, this option will not realize its potential.
- Fails to address the needs for standardization of service delivery, training and clarity of role expectations for Coordinators.

V/W OPTION III: Clarify Mandate by Acknowledging Dual Objectives: 1) Support to Victims and 2) A Better Prepared Witness Enables a Better Prosecution.

The Program will continue to provide direct services to victims of crime including services as court preparation, information, support and referrals out to appropriate community agencies.

Program will interact on the basis of equal partnerships with the Crown Attorney, police, courts, and community agencies, founded on the commonality of goals and needs in relation to victims as opposed to a supportive role to the "Crown System".

Roles and expectations of the partners will be clearly laid out in the provincial Program

Ministry will give the Provincial Coordinator permanent and recognized standing on the Divisional management team and equal access to central services.

Of particular note, the Program and the Crown Attorneys will work together to facilitate the well being and empowerment of the victim and give the victim the tools and knowledge to be prepared for the prosecutorial process.

Referral into the Program will be clearly based on needs of the victim as opposed to winnability of the case.

Conversely, the Program will not perform administrative or prosecutorial functions for the Crown Attorneys. For example, the Program will not act as substitute on mandatory Crown Attorney interviews with victims of sexual or child abuse or set appointments for the Crown Attorneys.

This change in interaction will bring about a significant cultural change to the working environment between the Coordinator and the Crown Attorneys. In particular, the Program will receive recognition as an equal partner, a significant departure from the supportive role to the Crown Attorneys currently in use. Full and open communication, tactfulness and sensitivity will be key to a smooth relational transition.

The positive effect of the Program in changing Crown Attorney and police attitudes and increasing their knowledge about victims, will continue in the partnership relationship.

Immediate "Information sharing" agreements with the "partners" will be crucial to giving the Program legitimate and automatic access to case information at the earliest possible point.

The Program will work in partnership with Courts Administration Division to develop, in a reasonable time, policies on: standardized interpretation services to victims, facility allocation, and technological sharing of information. Of note, the Ministry has standardized testing for qualification as accredited court interpreters who are available to provide service to offenders and victim/witnesses. To provide cultural interpreters specifically for victims will require additional funding for new training standards, testing and hiring of appropriate interpreters.

A Provincial Advisory Committee comprised of internal and external stakeholders and chaired by the Provincial Coordinator will be formed within a reasonable time frame.

This Committee will act solely in an advisory capacity without impact on the day to day operation of the Program.

The Advisory Committee's initial task will be to assist and facilitate the Provincial Coordinator in the development a Provincial Victim/Witness Protocol, as soon as practical, in order to standardize and clarify roles and relationships, level of service and information flow as well as to ensure referral into the Program at earliest point.

Its overall mandate will be to ensure a consistent level of services across the province through adherence to provincial protocol customized to local needs. It will also ensure a continuous conduit of best practices, suggestions and ideas from the sites to the Provincial Coordinator for policy and procedural development.

Specifically, the site Coordinator will, on the basis of local needs determined through consultation with community agencies, adapt the provincial protocol into a customized draft local protocol which will be forwarded to the Advisory Committee for acceptance with or without modifications requested.

The presence of the Advisory Committee will provide a framework, safeguard legitimacy for the local site coordinator.

Program will undergo gradual shift in focus assuming a coordinating role instead of support where redundant.

Provincial Coordinator will coordinate a review of internal and external training practices and a review of public education practises to maximize effect on services to clients.

Strengths

- Formalizes Program's standing and profile in the Ministry with a precise set of functions, and rights and strengthens the focus on victims.
- Better positions Program as an equal partner to the Crown Attorney, allowing it to sensitize internal stakeholders to the needs of victims.
- Standardizes level of service and encourages more uniform outcomes.
- Strengthens the relationship with the community and allows more capability to consult and deliver customized services responsive to local needs.
- Encourages ministry staff to work together through direct information support and referrals and through successful prosecution.
- Solidifies concept of partnerships rather than supporting roles.
- Provides smooth access to central services.

Weaknesses

- Unless the Senior Management of the Ministry of the Attorney General formally acknowledges and supports the Victim/Witness Assistance Program as an equal, necessary and valued program in the criminal justice system, this option will not realize its potential.
- Unless the Ministry makes sufficient base funding available for expansion of the Program across the province to provide equal access to a minimal level of service to victims in every court jurisdiction, this option will not work.
- The Program development of customized local protocols will hamper direct service delivery to victims in the short term unless additional the Ministry provides additional resources. This may be outweighed by the long term benefits of an empowering, continuum of complete service delivery.

Gradual shift to coordinating role may weaken relationships with the Crown Attorneys and police.

D. CRIMINAL INJURIES COMPENSATION BOARD

Deal First with the Backlog

The meaningful implementation of any option, or even maintaining the status quo, will require that steps be taken to deal with the current backlog of applications at the Board. The number of cases at various stages of the process is estimated at 6600, although not all of these cases are "ready" to be heard. As indicated above, if no further applications were received by the Board, it would take three years in time and funding to deal with the backlog.

The options for dealing with the backlog include:

1. Maintain current mandate of Board and let backlog increase.

If the Board's current mandate remains the same, and there is no further funding available, the backlog will increase. From the statistics available, it is clear that the annual number of applications being made to the Board has increased significantly since 1986 (1985-86 - 1799; 1991-92 - 3506). If necessary steps are taken to increase public awareness and to make the program equitable, the demand will be even greater. A failure to address the current backlog will increase the delays at the Board, and decrease client service by forcing the Board to stop holding hearings earlier each fiscal year.

2. Find one-time funding to deal with the current backlog.

It is estimated that in order to deal with 6600 cases in the same manner as other cases already heard by the Board, it would cost \$15 million per 2355 cases or \$42 million for 6600. Arguably, this figure could be reduced by increasing the efficiency of the Board but information from the Board suggests that the applications being received now are increasing in complexity. Given the current fiscal climate it is highly unlikely that the required dollars could be found to deal with the backlog in isolation.

3. Take away the right to compensation retroactively through legislation.

This option would eliminate the backlog by eliminating the right to compensation where an application had been filed. There would likely be grave opposition to this option given the emphasis of this government on victim's issues, especially in relation to cases where a significant amount of time has been invested by the applicant at the Board.

4. Re-focus and limit the current mandate of the Board and deal with the backlog in the normal course of applications.

This option fits with the architectural options looking at the re-focusing and limiting of the Board's mandate, and in particular the recommended option. If the mandate were to be limited, the number of applications being received would decrease, and more time could be spent on the applications currently in the system.

In each of the options outlined below, it is assumed that there will be no increase in the current funding available to the Board.

CICB OPTION I: Enhanced Status Quo

Maintain current mandate but increase emphasis on client service.

Strengths

- Board remains available to all victims of violent crime

Weaknesses

- Allows backlog to increase.
- Current caseload of the Board is unmanageable given resources, and an increase in public awareness and accessibility will increase caseload further.
- Concerns regarding timeliness will increase.

- Without an increase in the budget, the Board runs the risk of running out of funding earlier each year.

Analysis

Although the mandate of the Board is to provide compensation to all victims of violent crime, it is clear that information on the Board is not reaching all victims, and that the small percentage who do apply face lengthy delays in obtaining compensation.

Many issues have been raised (as the result of several reviews of the Board) regarding the Board's inaccessibility, timeliness, responsiveness, equity of access, and these concerns will only increase if the current mandate, in the absence of increased funding, remains unchanged.

CICB OPTION II: Disband Board

Strengths

- Money could be redirected to expand Victim/Witness Program or other victim services.
- Eliminates current inequitable access to funding.

Weaknesses

- Eliminates one of the few victim-centred services run by government.
- No other source of compensation for many victims.

Analysis

The administrative costs of this program is estimated at \$849 per victim, compared to the estimated administrative and service cost of the Victim Witness Assistance Program of \$250 per victim. Although an argument could be made that the budget of \$15 million could be used in other ways to better serve the victims, a decision to disband the Board would not likely be received favourably in light of this government's commitment to victims' issues. This program is one of the few government programs that is focused on victims, and is the only program that provides compensation to many victims.

Even if a decision is made to disband the Board, the issue of the backlog of 6600 cases currently within the system would have to be addressed (see above).

CICB OPTION III: Limit Mandate of Board by providing Compensation for Specific Crimes such as Child Abuse, Domestic Assault, Sexual Assault

Strengths

- Allows Board to focus limited resources on specific victims.
- Reduces caseload which will result in increased efficiency.

Weaknesses

- Denies compensation to all other victims.
- Has Charter/equity implications.
- Requires legislative change.

Analysis

As discussed above, it appears that the only way to deal with the many of the concerns facing the Board is to limit the mandate of the Board. It is recognized that any decision to limit the Board's mandate will not be popular. However, if no decision is made, the fundamental concerns facing the Board will continue to grow.

By limiting the mandate to sexual assault and child abuse victims, the Board is able to focus its activity on a fewer number of applicants. As a result, once the backlog is addressed, the applications will be processed in a more efficient manner, and the ultimate award will be received by the victim much earlier than is currently the case.

Although an argument could be made that this re-focused mandate will be addressing the needs of the more vulnerable in society, it is may be difficult for the government to justify a "shopping list" of crimes whose victims will be given priority in terms of compensation.

CICB OPTION IV: Maintain Current Mandate but Eliminate Pain and Suffering Awards

Strengths

- Leaves Board open to all victims.

- Saves 80% of current yearly compensation payments.
- Allows Board to process applications more efficiently by eliminating need for extensive investigations.
- Continues awards for pecuniary loss and counselling.

Weaknesses

- Pain and suffering award seen by external and internal contact as critical part of program.
- Substantially changes the mandate of the Board and the compensation available to victims.
- Requires legislation.

Analysis

Once the backlog of applications is addressed, this option would leave savings of 80% of the total compensation paid to victims \$8 million in 1991-92 and an estimated \$10 million in 1992-93). This amount would then be available to provide other forms of compensation to victims through the Board.

Although other jurisdictions have moved to models that do not provide awards for pain and suffering, most external and internal informants stressed the importance of pain and suffering awards for victims. The issue of the victims determining what is best for them and not the state (by providing or funding counselling only), is seen as an important consideration.

CICB OPTION V: Limit Mandate of Board by providing Compensation to Child Victims Only

Strengths

- Allows Board to focus limited resources.
- Significantly reduces caseload and increases efficiency of Board.
- Focuses on most vulnerable victims including adults who were abused as children.

- Due to decreased caseload, Board could award higher and more meaningful awards to child victims.
- Public education would be focused on children.

Weaknesses

- No compensation for adult victims (other than the adults who were abused as children).
- Possible Charter/ equity implications.
- Requires legislative change.

Analysis

Although similar concerns will exist as under OPTION III, any decision to re-focus on children may be more justifiable. This option would continue to allow adult victims to make applications relating to abuse suffered in childhood.

A mechanism for allowing older child victims (possibly 14 and over) to bring applications on their own behalf, could be explored. This would be a child-focused service, and the role of the Board in providing funding for interim counselling for children, if required, could also be emphasized.

Over 600 (out of a total of over 3,000) applications relating to child abuse were received in 1992-93 by the Board. As the result of a special project for St. John's and St. Joseph's Training Schools, over 400 applications have been received from adults in relation to childhood abuse in those institutions alone. Although it is estimated by the Board that the number of applications relating to childhood abuse will increase, by limiting the mandate of the Board in this manner, the Board will be able to effectively deal with the cases. A decrease in the overall number of cases being heard by the Board will eventually lead to the ability of the Board to award higher and more meaningful amounts for pain and suffering.

By limiting the annual number of applicants, the Board, over time, would reduce the current backlog.

Although it is recognized that there may be many therapy and counselling services available for children in the community, this is the only program that would award compensation for pain and suffering. For many abused children, a meaningful lump sum award may provide a brighter future.

E. OFFICE OF THE OFFICIAL GUARDIAN

OG OPTION I: Privatization Model

Pursuant to this model, the OG's Office would cease to exist and the service would be provided by members of the private Bar. This could be accomplished, for example, by setting up a special panel of lawyers who are certified by the Law Society as experts in children's law; whenever a judge felt it was appropriate, or was required legislatively, to appoint a lawyer for a child, he/she could access the panel lawyer list.

Analysis

With the exception of one informant, all others (and this issue was discussed with most informants) were strongly opposed to this option. It was generally felt that there was a need for a special independent office with expertise in the delivery of children's legal services and that it would be regressive and detrimental to clients to privatize this service.

Strengths

This would potentially be less costly to the government as those families who do not qualify for legal aid would be required to pay for the child's representation.

Weaknesses

At present, with the exception of the panel lawyers, there is a lack of expertise in the private Bar in representing children and training would be required. There are few courses offered at Law Schools focusing on children's law and these are not mandatory.

LSUC would have to develop criteria for granting this type of specialization and administer it.

Without OG's Office, there would be a need for some other organization (e.g. LSUC) to:

- set standards
- monitor performance
- weed out poor performers
- provide support and advice
- provide ongoing training
- oversee the provision of social work services
- monitor the quality of social work services

Who would pay for the service: if only one of the parents could afford to pay, this would result in pressure, or perceived pressure, on the lawyer to favour that parent's position; if Legal Aid, are simply "trading" taxpayer's dollars.

Model could result in more litigation/less settlement which is the more traditional of a litigation lawyer, whereas OG lawyers are trained to be more mediation, settle focused.

Members of private Bar might not appear to be as "neutral" as OG lawyers and opportunistic; as a result, they would carry less credibility with the opposing parties at the court.

OG OPTION II: Delivery of Local Services Model

Pursuant to this option, local staff offices would be set up throughout the province. It was suggested that, at a minimum, offices should be located in the 14 regions used for training purposes by the Office; informants were of the view that eight staff offices situated in each of the court regions would be inadequate.

In some regions, a hybrid model could be implemented which would utilize a staff office together with outside panel/agent lawyers and agent social workers. For example, in those areas that are large geographically, such a model would be appropriate in order to deliver better client service. In other areas, there may not be sufficient caseload to dictate retaining full-time legal staff to do both personal and property rights work; in such a case, it might be preferable to set up a staff office that dealt exclusively with personal rights cases and continued to contract out the property rights work.

Analysis of Reform Option

It was the consensus of informants that this model should not be implemented. Informants were of the view that, while this model was an attractive concept, there were insufficient reasons to warrant the expense and disruption associated with implementation. It was noted that the present system is operating well, continues to improve with every empanelment exercise, and would not necessarily be improved by a staff office model. Rather than implementing this option, informants were of the view that improvements should be made to the current delivery model (see infra Subsection, "Enhanced Status Quo Model").

In order to provide further guidance with respect to the appropriateness of this model, a rough assessment of the potential costs involved were analyzed based on a pure staff office model, it would appear that the costs of implementation would be approximately \$18.1 million which is \$6.3 million higher than the 1992-1993 budget of \$11.8 million.

Pursuant to this model, in addition to the Head Office, fourteen staff offices would be situated throughout the province based on the regions used by the Office for the training of panel lawyers. The number of staff lawyers and social workers allocated to each office is based on the regional caseload statistics provided by the Office. Appropriate managerial and support staff have also been taken into account. Greater detail with respect to this model is included in Appendix G.

Strengths

Model would regional presence/closer to clients - could facilitate localized public education activities and increased local knowledge of service.

In personal rights cases, would assist court when need to appoint OG lawyer on emergency basis [although Office claims to meet this need within two to three days].

Model could result in greater sensitivity to community needs/cultural uniqueness of community (e.g. native children).

As a hybrid model, could ensure better and more regular training and closer supervision of contract lawyers in the region.

The local model would provide social worker agents who operate out of their homes with facilities for conducting interviews and negotiating settlements where these are otherwise unavailable.

Weaknesses

The need for local services model has not been demonstrated; current system is operating well and is respected; panel lawyers interviewed feel support and accessibility to central office is good (do not feel isolated).

It would be very expensive to implement.

There is a need in most regions for staff lawyers to do both personal and property rights work, as there are insufficient property rights cases to warrant full-time property rights staff lawyers. This requires different skill sets and legal knowledge [alternative, however, might be to have staff lawyers only for personal rights work and to continue with agents for property rights].

Model could lead to potential loss of control of/accountability to Head Office.

OG OPTION III: Amalgamation with the Office of the Public Trustee

Pursuant to this option, the OG's Office would be integrated with the Public Trustee's Office and no longer operate as a distinct office: the Office could either be amalgamated with the PT's Office as it currently exists or when the new PG&T is implemented.

This option will also be discussed in the section dealing with architectural reform options for the Office of the Public Trustee, and will be briefly considered in this section from the perspective of the Office of the Official Guardian.

Pursuant to this model, the PT's Office or the new PG&T would include a large Legal Division that would provide not only legal services for mentally incompetent persons

whose estates the PT administers and other PT legal services (e.g. legal representation of charities), it would also provide legal services for children (and other vulnerable persons) as currently provided by the OG. In order to better understand the nature of legal services that the amalgamated Office would provide, please refer to Appendix 1 which sets out in chart form the primary legal responsibilities of the Official Guardian and the Public Trustee.

Depending upon whether it was decided to implement a local staff office model, legal services could be provided by both in-house lawyers and local private lawyers who would be subject to some type of empanelment process and training. Lawyers in the amalgamated office could be required to represent all types of clients, as well as different types of cases (i.e. both personal and property rights cases) or, in the alternative, delivery of legal services could be specialized.

It is important to note in considering this option that an informal protocol exists between the two Offices with respect to the delivery of certain legal services which is designed to ensure that duplication of service delivery does not occur. For example, in certain estate matters where the OG and PT are representing different parties with similar interests, only one lawyer will be sent to court and will represent both interests.

Analysis

Most informants were of the view that this model should not be implemented. They suggested that amalgamation with the PT's Office would not improve service delivery for OG clients and could, in fact, make it worse; further, it would prove confusing to clients in accessing the service. Informants were of the opinion that maintaining a separate, specialized office for the provision of legal services to children gave recognition to the importance and distinctiveness as a special client group. Concerns were expressed that amalgamation represented a step backwards and could jeopardize the advances that have been made over the past two decades in recognizing children as persons with their own rights.

Strengths

Model could lead to potential cost savings (e.g. sharing of some administrative support could reduce costs of service delivery).

Would offer opportunities for closer co-ordination in representation of vulnerable persons.

Weaknesses

Informants feel that children need and are entitled to separate, specialized legal services.

Without extensive public education, would be more confusing to OG clients in accessing the service.

Cost savings would likely not be significant particularly in light of the fact that the Offices have different clients and there is very little duplication of service (which is currently addressed by an informal protocol between the Offices).

If lawyers were required to represent different types of clients (e.g. minors, mentally incompetent adults, charities, estates without beneficiaries), informants suggest that this could make service delivery to OG clients worse since the representation of children requires specialized skills

Conflict of interest cases will arise which will have to be addressed by retaining services of the private Bar which could prove costly.

Model could negatively impact on morale of OG staff.

Would require legislative amendments.

OG OPTION IV: Enhanced Status Quo Model

Pursuant to this option, the OG and PT would be maintained as separate offices but their individual mandates would be more focused on delivery of services to their primary client group. With respect to the OG's Office (which would be renamed, for example, the "Ontario Children's Lawyer" or the "Office of Child Representation"), the client would be children and not mentally incompetent persons not-so-found, psychiatric patients or absentees, who would become the exclusive responsibility of the PT (The one exception could be unborn and unascertained beneficiaries in estates matters.)

In addition, the current mandate of the Office could be more focused to provide services on a truly last resort basis and only when they would be of benefit to the client. This proposal was explored in some detail earlier in Section V of the Report under cost constraint findings and will only be briefly summarized. It was suggested by informants that the OG should be given greater discretion through legislative amendments with respect to which cases he takes on to ensure that legal representation will only be provided when it will truly be of benefit to the client. Further, particularly with respect to property rights cases, it was proposed that the OG should only act where there is no one else "able" to represent the child or where the child's interests would not be adequately protected by another party to the litigation.

Further, pursuant to this model, the delivery of services would be improved upon by the implementation of a number of the internal program reform options, discussed in Section V, for example:

- more extensive public education (e.g. information packages directed at different audiences; pre-recorded general information)
- clarifying the role of OG lawyers to ensure consistency in service delivery and to more clearly recognize the rights of children

- more intensive and ongoing training of outside professional staff, as well as in-house staff, and the need to provide regular training on fundamental subject matters such as interviewing children, mediation/settlement negotiation, and race relations/cultural differences
- setting of standards/guidelines when don't exist and fleshing out current standards/guidelines which govern professional staff
- increased monitoring of performance of outside professional staff (reduction of number of panel lawyers; increased reporting to office; broad publication of complaints process)
- creation of an interdisciplinary and regionally representative Advisory Committee, which would include client representatives, to assist the CG in setting guidelines, standards and maintaining a high level of service delivery.

Analysis of Reform Option

The majority of informants were supportive of this reform option. They noted that the attractiveness lay in taking a program that was currently working well and improving upon it. As noted earlier, informants strongly favoured the continued separation and delivery of legal services to children and were of the view that this model only served to strengthen that commitment to children as a distinct client group by refocusing the mandate of the Office.

In addition, it was noted that the current service delivery model was less costly than others, such as a local staff office model, and could be made more cost effective. For example, if the Official Guardian were given greater discretion based on client need with respect to the types of cases taken on, and could charge for others (e.g. OG Representation), some savings could be realized without negatively affecting client service.

Strengths

This model recognizes informant's views and general public acknowledgement that children need and are entitled to separate, specialized legal services.

Clients could more easily access services, as the Office would only represent children and not other client groups.

Clients would be ensured to receive high quality legal services but only when they truly needed and as last resort.

The model maintains, but improves upon, current method of delivering legal services which is acknowledged as working well, being more cost effective, and appropriate to service requirements.

Weaknesses

This model would require legislative amendments to refocus the mandate on children and to transfer the responsibility for legal representation of other clients to the PT

This model would require legislative amendments to provide the OG with greater discretion with respect to case selection.

Costs could be involved in implementing a number of the proposed internal reform options, although these could be off-set to a certain extent by the revenue-generating and cost constraint options discussed.

F. OFFICE OF THE PUBLIC TRUSTEE

PT OPTION I: Amalgamate with the Office of the Official Guardian

(i) Full - Functional and Administrative

Several internal informants have suggested opportunities for efficiencies to be realized through the combination of the Offices of the Public Trustee and the Official Guardian. Among other things, they point out that in many other jurisdictions, it appears that the functions of the Office of the Official Guardian are generally combined with the functions of the Office of the Public Trustee in one office. The proposed new British Columbia Public Guardian and Trustee Bill, introduced in the British Columbia Legislature June 18, 1993, proposed to merge the offices of the Official Guardian and the Public Trustee into the new Public Guardian and Trustee. This option is more fully described in the preceding subsection of Section VIII which deals with the Office of the Official Guardian.

Administrative integration could occur immediately, with full integration following required legislative change. Alternatively, administrative amalgamation could occur at the time of implementation of new public guardian and trustee legislation, with full integration occurring following required legislative change.

As one might expect, there are different strengths and weaknesses with respect to this option from the perspective of the Office of the Public Trustee, as compared to the Office of the Official Guardian.

Strengths

Potential cost savings (e.g. opportunity to share some common support services, including finance and administration, human resources, legal and management of the investment portfolio) and in the case of the investment portfolio, opportunities for better commercial management and enhanced return. Additional funds raised could be applied to improving general level of service to clients.

Opportunity for closer coordination in representation of vulnerable peoples.

Potential for the Office of the Public Trustee to benefit from positive public image of Office of the Official Guardian.

Mixing corporate cultures of the Office of the Official Guardian with the Office of the Public Trustee may have positive impact on the corporate culture in the Office of the Public Trustee.

Weaknesses

No meaningful support of this option from external informants or at the Office of the Public Trustee.

Would likely require legislative amendments.

Unlikely to contribute meaningfully to resolution of outstanding customer service related issues facing the Office of the Public Trustee in the short to medium term.

Creates additional integration issues to be faced by the Office of the Public Trustee.

Could negatively affect morale in the Office.

Separate office locations likely to work against easy integration.

Conflict of interest cases will arise which will have to be addressed but retaining services of the private Bar which could prove costly.

(ii) Partial - Functional and Administrative

The new Consent to Treatment Act, 1992 and Consent and Capacity Statute Law Amendment Act, 1992 will together have the effect of consolidating the current responsibilities of the Office of the Official Guardian with respect to its role as substitute decision maker of last resort for psychiatric patients in mental health institutions and legal representatives of last resort before the Mental Health Review Board into the Office of the Public Guardian and Trustee. In a sense, this will represent a form of partial amalgamation of functions and during the period leading up to the implementation of the

new legislation, it will be necessary for the two offices to cooperate closely to ensure that upon implementation, the functions previously carried out by the Office of the Official Guardian can, in their revised state, be assumed without interruption by the Office of the Public Guardian and Trustee.

There is at least one other function which could be a candidate for consolidation or transfer to the Office of the Public Guardian and Trustee. Currently, the Official Guardian has responsibility for initiating or defending personal rights and estates litigation on behalf of minors, as a result of court appointment as litigation guardian for the minor or by institution of an action without court order in circumstances where the parent or guardian is unwilling and unable to pursue the claim. Again, it has been suggested by internal informants that this area or responsibility could be transferred over to the new Public Guardian and Trustee. Monies received in the form of judgments or settlements are paid into court and administered on behalf of the minor by the accountant of the court, with the assistance of the Official Guardian. It is pointed out that the Office of the Public Trustee already manages personal rights and estates litigation on behalf of its trust administration and crown estates clients and the related assets of these clients. In addition, as noted above, the functions of the Official Guardian, particularly with respect to the representation of minors in personal injury and estate matters, appear in most other jurisdictions to be the responsibility of the public trustee office. For example, this appears to be the case in all other major Canadian jurisdictions, notably British Columbia, Alberta and Quebec.

As one might expect, there are likely to be different strengths and weaknesses with respect to this option from the perspective of the Office of the Public Trustee, compared to the Office of the Official Guardian. The options related to the Official Guardian did not even raise this issue, since it does not best serve the focussing of that mandate or its positioning on the continuum of supports. Despite this, it is considered here, in order to represent the full range of options.

Strengths

Opportunities for common support services, particularly, legal and management of the investment portfolio create potential for some economic efficiencies and in the case of the investment portfolio, opportunities for better common management and enhanced return. Additional funds raised could be applied to improving general level of service to clients.

Opportunities for closer coordination in representation of vulnerable peoples.

May assist the Office of the Public Trustee address critical staffing shortage in estate litigation in short term by creating access for the office to resources and expertise of Office of the Official Guardian in the personal and estate litigation area.

Mixing corporate cultures of the Office of the Official Guardian with the Office of the Public Trustee may have positive impact on the corporate culture in the Office of the Public Trustee.

Weaknesses

No meaningful support among external informants or at the Office of the Public Trustee.

Amalgamation would likely require legislative amendments.

Unlikely to contribute meaningfully to resolution of outstanding customer service related issues facing the Office of the Public Trustee in the short to medium term.

Creates additional integration issues to be faced by the Office of the Public Trustee.

Separate office locations likely to work against easy integration.

Loss of conflict resolution alternative (i.e. Official Guardian sometimes represents interests of incompetent adults where Public Trustee unable to act because of conflict of interest).

(iii) Administrative - only

It may be desirable to contemplate the closer coordination and/or integration of certain support services provided directly or through the intervention of third parties. Perhaps the most likely candidate for integration is the role played by the Office of the Public Trustee in pooling and investing, with the assistance of professional portfolio managers, the funds of trust administration and crown estate clients with the role played by the Accountant of the Court in safekeeping and investing the funds of clients of the Office of the Official Guardian.

Currently the Public Trustee manages an investment portfolio of approximately \$1 billion, with the assistance of the Canadian Imperial Bank of Commerce and the Bank of Montreal and their respective investment banking affiliates. The Accountant manages a portfolio of approximately \$450 million without regular independent portfolio management advice. This option is already under active consideration by the Minister of the Attorney General, in consultation with the Public Trustee and the Office of the Official Guardian.

Internal informant interviews with staff at the Official Guardian create the impression that information flow to the Official Guardian could be facilitated to a greater extent than currently the case. This problem was discussed earlier in Section V with respect to findings related to the Office of the Official Guardian (see Timeliness). At present staff of the Official Guardian must attend in the offices of the Accountant to check balances of individual client trust funds. It was suggested that integration with the advanced computer based reporting system already in place at the Public Trustee might be an effective response to this ongoing issue. In addition, it should be noted that the Accountant is currently developing separately its own computer based reporting system. The Review Team understands that it is not compatible, from an information technology

perspective, with the Public Trustee system. Further, internal informant interviews with staff at the Public Trustee, as well as the Official Guardian, suggested that improved investment results might be achieved for clients of both the Public and the Official Guardian if the funds of each group of clients could be pooled and invested under either common management or in a coordinated manner.

Strengths

Administration efficiencies could be realized from the consolidation of funds administered separately by the Public Trustee and Accountant. It may be possible to simply expand the Public Trustee computer based reporting system to service the needs of the Accountant, the Official Guardian and the Public Trustee and their respective clients.

To the extent that the pooling of resources result in higher overall rates of return and such additional return is passed along, at least in part to clients, the action will be well received by clients.

To the extent the additional investment returns which are realized are made available to the Offices for client service needs, the quality of service will be improved.

The extension of the Public Trustee reporting system to the Accountant holds the potential to address the informational needs of the Official Guardian.

Weaknesses

Costs incurred to date in developing a separate reporting system at the Office of the Accountant, currently estimated at \$200,000, may not be seen to have been employed to the best purpose, although at the time the funds were committed there was a need for a system and no reasonable prospect of consolidation with the Public Trustee system.

An undetermined cost will need to be incurred to upgrade the Public Trustee system to accommodate the Accountant and the Official Guardian.

PT OPTION II: Privatization Model

In recent years, the Office has established successful arrangements with private sector firms to provide tax preparation, banking and custodial services, investment counselling and portfolio management, real estate brokerage and some legal services, primarily relating to litigation. In each case, clients of the Office appear to have benefitted by the choice of the Office to draw upon the experience and expertise of the private sector to deliver specialized services. The process of focussing the limited resources of the Office on providing client services for which the Office has the required expertise and clients will be well served is continuing. In response to criticisms from the Provincial Auditor regarding the management by the Office of client properties, the Office has recently initiated a public tender process which will lead to the selection of a property management firm who will act on behalf of clients.

A number of external informants, both members of the Bar and representatives of private trust companies suggested to the Review Team that the Office should consider privatization of some or all of the work currently undertaken on behalf of crown clients. They pointed to the fact that in other Canadian jurisdictions, either in the past in the case of Saskatchewan, or currently in the case of British Columbia, private firms or trust companies act as agents or administrators of specific crown estates. Further, they point out that the prior Public Trustee had held discussions with certain trust companies and law firms about establishing such an arrangement in Ontario on a pilot project basis. In addition, the Review Team notes that in British Columbia there has been some discussion in the community of making provision for not-for-profit groups to manage small estates. While these discussions have not resulted to date by such groups administering estates on behalf of the B.C. Public Trustee, this option continues to be a possibility.

Strengths

Privatization of estates administration likely to result in higher level of customer service until office is reorganized to deliver better service in which case thereafter strengths will be as clear.

Weaknesses

Privatization of estates likely to result in increased cost to government. Private interests will be willing to assume responsibility for clients who have ability to pay and those unable to pay are likely to remain the burden of state.

Privatization of estates would eliminate one of the profit centres for Office which could contribute to cross subsidize other programs.

Privatization of estates could increase the potential for abuse of financial interests of vulnerable people. The Office would be expected to monitor effectively the activities of private administrators.

Privatization of estates would reduce ability to ensure that services privatized form part of continuum of supports.

Reduced policy coordination possible with respect to vulnerable people.

Any significant privatization of crown estates responsibilities of the Office may require legislative change.

PT OPTION III: Enhanced Customer Service Model

There is broad consensus both within the PT and in the community that significant change is necessary in order for the mandate and responsibilities to be carried out in a manner satisfactory to clients. In addition, there is also broad consensus on the types of changes which are thought to be required. The changes discussed below do not assume or make specific provision for the PT to assume its new responsibilities under the Substitute Decisions Act, 1992. However they are wholly consistent with recommended action found elsewhere in this Report with respect to the new responsibilities of the PT.

First, the PT must have an effective and sympathetic advocate within the Ministry who understands its pressures and is committed to ensuring that adequate resourcing is made possible.

Second, additional administrative flexibility must be provided to ensure that resources needed to deliver a satisfactory level of service to clients is possible. This would use the existing administrative flexibility of the PT to support client service on a cost-recovery basis.

Both British Columbia and Quebec currently allocate fees to client services, and Alberta has announced legislation with the intent to do so. In Ontario, the original legislation appeared to offer this potential, but has not been exercised as such for a number of years. For discussion of options regarding administrative flexibility, see recommendation 16 under Section VI. In any case, the desired result could be achieved by obtaining waiver of compliance with respect to certain Management Board guidelines and directives.

Third, the mandate of PT must be refocussed to ensure that the office delivers an acceptable level of service to the primary clients of the office, the trust administration and crown estate clients. The recent history of the PT is that the office holder was unable to focus sufficiently on the diverse businesses of the office to manage as effectively as clients require the various responsibilities currently assigned to the office. There are specific recommendations regarding the need to refocus the mandate set out following this discussion.

Fourth, the Operational Review must be implemented. It is virtually impossible to estimate the resources which will be necessary to address the service deficiencies until one has conceived and implemented a plan to reengineer the PT. In addition to and as part of the implementation of the Operational Review, a series of initiatives to improve client service should be undertaken, including the establishment of community based boards with advisory and accountability responsibilities in each of the major program areas of the Office; and the creation of client service standards, benchmarks and manuals, the review of all front end processes of the Office, the establishment of consumer education, inquiry, complaint and research services to help ensure the delivery of client focussed service. These issues are addressed in the recommendations which follow this discussion.

Fifth, new premises must be found for the PT without delay. This issue has been discussed in the findings and does not need much additional treatment. Suffice it to say that the prospects for the successful implementation of the Operational Review are likely to be greatly enhanced by finding new premises for the PT.

Sixth, as discussed above as the administrative amalgamation with the Office of the Official Guardian option, certain key common administrative functions of the PT and the Office of the Official Guardian could be combined. The most likely candidate for combination in the short term would be the management of the respective client investment accounts.

A seventh and final key component would be to establish a flexible, community based presence for the PT. There is a broad consensus that the current centralized delivery system does not permit the PT to service its clients effectively. Even with the other improvements which are being recommended, service delivery of a satisfactory level cannot be achieved without creating a greater local presence for the PT. It is significant that while not every other public trustee has a local presence, those which are seen to be the most successful models, British Columbia and Quebec, do in fact have a local service presence. No specific form or structure for the localization of service is included. Rather the PT should be encouraged to implement a flexible cost effective system which uses to the extent possible existing local social justice or social policy delivery systems. For example, the recent long term care initiative presents an excellent opportunity for the PT to explore with the Ministry of Health the prospects for housing client agents of the PT in either existing agencies such as home care agencies, or placement coordination offices or ultimately in multi-service agencies. At the same time the PT could consider placing agents of the office in facilities in which the office has a significant number of clients, for example the Queen Street Mental Health facility. Alternatively, in small communities, the PT may wish to simply appoint part-time agents who would not have a permanent office but would be linked technologically with the central office of the PT.

Strengths

Generally increases potential for satisfactory client service.

Additional administrative flexibility to eliminate constraints which are inappropriate to the delivery of user pay services. Most external informants believe the Office is inadequately resourced and this additional flexibility should address this concern.

Improved focus will result in greater client and stakeholder satisfaction in areas of charities.

Implementation of Operational Review and client service improvements should increase significantly level of client and stakeholder satisfaction.

Economic efficiencies may be realized by combination of support services with OG.

Local service delivery requested by most external informants.

Local service delivery needed to create satisfactory level of service delivery.

Increased local presence likely to generate additional client responsibilities which will in turn generate high revenues for the office.

Weaknesses

May create client and stakeholder expectations which will be difficult to meet.

Additional financial resources needed to improve client service may exceed current sources of available funding.

G. IMPLICATIONS FOR PUBLIC GUARDIANSHIP

In the process of speaking with informants and reviewing the experience of other jurisdictions, three distinct models for organizing the public guardian responsibilities of the PG&T along side the continuing trust administration responsibilities of the Office were identified.

OPTION I: Two Separate Organizations

The separate entity approach was suggested by the Fram committee. Under this approach the office of the PG&T would be divided into a public guardian division and a public trustee division. Each division would perform statutorily mandated tasks separately. Presumably, common support functions would be carried out by common working groups. Areas which come to mind include finance and administration, human resources and communications. One could imagine that there would be separate client service representatives appointed, if the person were a client of each division. In any regional presence of the PG&T, the presence of public trustee division personnel could either be housed together with public guardian division staff or separately. Under this model, more likely than not personnel in any regional office would maintain separate functions and reporting relationships to a specific division.

In a sense, the separate division approach is similar to the separate office approach of Alberta. While the staff of the Public Guardian and the Public Trustee work closely on many common files, each maintains separate office premises and works independently on client matters.

Strengths

This option reduces to the extent possible potential for conflict of interest between trustee and guardian, where a client is serviced by each function.

This model would ensure that each office or division is able to focus narrowly on its essential business purpose.

Two separate organizations would reduce possible criticism that resources of the trustee function are being applied to subsidize the activities of the public guardian.

Weaknesses

Separation of function would make more difficult the delivery of integrated and consistent services to clients of each office or division.

This is a less client-focused delivery system; the client of both services is required to interface with each office or division separately.

This model would reduce the ability of each service to take a holistic view of the individual's needs.

This model would restrict ability to share resources and to benefit from relevant experience with clients and various stakeholders.

Two separate organizations are likely to be more expensive to administer than other options.

OPTION II: Fully Integrated PG&T

Under this option the two functions, the trust administration role and the guardian role, would be combined within one operating division. The division would be supported by a number of common support services. Clients would be serviced by a single client representative backed either by a team of individuals or by common support services. Given the existing arrangement of the Office of the Public Trustee, one can imagine that the personnel most likely to be called upon to become client representatives would be the existing trust officers and assistant trust officers.

It would appear that the office of the Public Curator in Quebec has organized itself using this model. There are teams which have a portfolio of clients. Some are trust clients and others are guardianship clients. In each case there is a single client representative for each client.

It would appear that this model is under active consideration by the Public Trustee in British Columbia.

Within this model, it may be possible to avoid setting up stand alone offices for this role. In Quebec, for instance, the localized services of the Curator are coordinated through the Office des Handicappes, which provides space and administrative support. This allows the office to provide a regional, personal service without the overhead of a full office.

Strengths

This model would increase the ability to approach each client from holistic perspective over Option I.

This model is more client-focused than Option I by ensuring only one client representative.

This model offers opportunities for greater economic efficiency through economies of scale.

Weaknesses

The potential for conflict of interests for clients has been expressed by some stakeholders.

It may be difficult to provide adequate training to trust personnel to ensure that staff is adequately trained for both trust and guardian roles.

It is unlikely to be well received in the community which has existing relationships with the Office of the Public Trustee.

OPTION III: Coordinated PT and PG

Under this model, the Office of the PG&T would seek to focus on the optimal service delivery mechanism from the perspective of the client. From the client's perspective, there should be only one staff member with whom regular contact should be necessary.

By establishing a network of field officers dispersed throughout the province, as well as customer service representatives based in Toronto to deal with clients in the greater Toronto area, the office will take a necessary step to establish guardianship services. These representatives can act for both trust and guardian clients.

In the case of trust clients, they can act as the eyes and ears of the trust staff. In the case of the guardianship role, they can play the front line function, supported wherever necessary, by professional staff at head office or under contract.

Under this model and the other models discussed above, there can and should be flexibility in designing an appropriate local delivery capacity. It could consist of offices separate and distinct from other Attorney General or government offices in general. Some or all offices could be integrated into existing offices. Possible choices include the court houses or one or more points in the long term structure created recently by the Ministry of Health. In this regard, it has been suggested that home care offices, placement coordination offices, or ultimately multi-agency organizations would be wise and effective choices for housing the new local presence of the PG&T. In addition, the approach to be taken could be varied. A number of different approaches could be taken, including placing representatives into one or more of the alternatives identified above, or simply hiring agents in smaller communities to provide part-time capacity, much like the social workers hired by the Office of the Official Guardian to write official Guardian.

In Quebec, for instance, the localized services of the Curator are coordinated through the Office des Handicappés, which provides space and administrative support. This allows the office to provide a regional, personal service without the overhead of a full office.

Strengths

This structure is likely to be well received by clients and stakeholders generally.

It combines the major strengths of the first two options:

- limits to some extent potential conflicts of interest;
- ensures that each division can concentrate on its essential business purposes;
- provides opportunity to approach client from holistic perspective;
- creates opportunities for economic efficiencies.

Weaknesses

This model would not achieve the degree of economy of scale offered in Option II.

H. POSITIONING PROGRAMS IN THE MINISTRY

In addition to architectural options for each of these individual programs, the Review Team has also considered the strengths and weaknesses of positioning these programs differently within the Ministry of the Attorney General. The same criteria which are used in individual program review can be used to assess these options, with special importance attached to the broader corporate criteria.

Within the framework of client-focused service discussed here, these options seek to strengthen the capacity of programs and the Ministry as a whole to deliver the most appropriate and high quality service as well as to capitalize on economies of scale or funding opportunities.

The findings of this review also have some important implications for rethinking the regional presence of the Ministry of the Attorney General with regard to client service. They suggest that when information needs exist, they should be handled through telephone services. Similarly, when direct client contact is necessary, every effort should be focused on developing a regional presence - but one which does not presume a large regional office.

This opens up two options for developing local services. First, it may be possible to develop arrangements with other government services to share space and administrative/support staff. Some examples of this type of arrangement have been implemented in Quebec's Office of the Public Curator, which uses space and administrative staff of local offices for disabled persons' services in order to support its regional activities. Alternatively, it may be possible to use existing space in Ministry court buildings, but to share administrative and support staff. This could be accomplished by requiring that Regional Directors of Courts Administration facilitate administrative services for these programs locally, with the program budget sharing costs.

OPTION I: Leave in Current Divisional Context

Strengths

Would not involve any corporate reorganization and potential associated costs.

Strongly preferred at present by Victim/Witness Program in belief that the relationship with Crown Attorneys in Criminal Division is the basis of the program's success in producing cultural change with respect to victims and critical to access to information. However, it has been noted that programs in every other Canadian jurisdiction operate outside of a Criminal Division without these dilemmas.

Weaknesses

Provides no distinctive service profile for Ministry to clients or community.

Programs are less likely to receive recognition of their service efforts, or to be reinforced for their successes.

The lack of profile of clients would leave many issues related to the rights of clients in the margins of the Ministry's agenda.

Programs unlikely to meet needs in as responsive, timely, accountable, and cost-effective manner.

Programs would not be able to position themselves in relative and consistent terms on a broader continuum of supports.

Clarity and consistency on the images of client-focused service would be lacking.

Few, if any, economies of scale could be realized.

Little corporate profile, ownership, or linkages across Ministry on service and community issues could be developed.

Public education, training, and other strategic investments for clients would be less easily developed.

OPTION II: Move together to Position on a Divisional Basis

Strengths

Offers opportunities to create a holistic, preventive strategy which links these programs and builds upon mutual capability.

Would place client and community issues at the senior management table.

Creates Divisional strength while retaining program integrity.

Appears to have been accepted by the majority of current program directors as a benefit to their activities.

All of these programs stand to gain, but the program that has most to gain from this strategy is Guardianship function, which would be implemented within a service culture.

Programs would be supported in focusing in on central service requirements.

Programs could work collectively to position themselves on the continuum of supports.

Collective efforts would support greater profile, consistency, and clarity of a client-focused vision.

Programs could better face and meet needs in terms of responsive, timely, and effective service.

Optimal economies of scale could be realized.

Local service issues could be approached as rational business decisions related to service requirements, and coordinated resource bases generated when essential.

Would enhance opportunities to empower and work with community in a consistent and coherent framework, including the coordination of advisory functions.

Would encourage consistent and continuing linkages with other Ministries, governments, and community and client stakeholders.

As a whole Division, programs would be better able to create a continuous learning culture which would support a client-focused vision of service.

Would provide leadership, managerial commitment, and a supportive empowering structure for staff related to service.

Staff development and training could be emphasized to ensure that the changes will be lasting.

Recognition and rewards for both direct quality service to clients and indirect client benefits would be structured into the organization.

Employees in a client-focused Division can be encouraged and enabled to make suggestions to improve good client service, or report any conditions that detract from good client service, for example:

- programs could organize staff gatherings to discuss the organization's mandate and philosophy and rediscover how these can be concretized in client service terms within their work
- programs could provide incentives for suggestions which can be practically implemented to save money or improve client service, as some public and private sector organizations do
- recognition and rewards could be implemented which could include words of praise, letters to supervisors, increased autonomy, developmental assignments, merit increases, and promotions. Financial incentives were identified by the 1991 Customer Service Task Force as a way to reflect the importance of customer service.

Weaknesses

Because of short term disruption involved in setting up a new Division, this option require some significant commitments to the community and to client service.

Would not be embraced easily by the Victim/Witness Program.

Subsets of OPTION II

A related issue to positioning these programs together in the Ministry involves their location in a particular division. Three options have been considered, including Locating Programs Together in Courts Administration, Locating Programs Together in Civil Division, or Developing a New Division Focused on Client and Community Operations. Each is outlined below with an analysis of their relative strengths and weaknesses.

OPTION II A: Locating Programs Together in Courts Administration

Strengths

The Courts Administration Division has begun a client service assessment in order to reconsider its activities and roles. The set of services under review here could be from being part of this ongoing effort.

This Division has the regional infrastructure necessary to deliver services locally. Incorporating programs for these clients into this division, the administrative economies of scale might be strengthened.

Weaknesses

Conflict of interest issues arise in that most of these programs act as litigants in court. Concerns about this problem have been previously raised about the Family Support Program. In the view of Directors of these programs, this reason alone is sufficient to dictate against locating these programs within this Division.

OPTION II B: Locating Programs Together in Civil Division

Strengths

Two of the existing programs of substantial size are currently located within Civil Division.

It may be possible to generate a branch devoted to client service within this Division, giving it equal and separate status in relation to a branch focused on other issues.

Weaknesses

This Division is in the midst of a general business reform focused on the internal clients of government. It has a great deal to achieve in refocusing its mandate and services in this regard.

The remaining work of the Division is focused on internal issues to government, not on clients and community.

OPTION II C: Locating Programs Together in a Community Operations Division

Strengths

A new Division best achieves advantages outlined above by placing issues of clients and community on equal footing at the senior management level.

This reflects trends in other jurisdictions, which have placed community as a priority.

Weaknesses

In the current structure of the Ministry, this option would require a new senior manager. However, this could be resolved by folding the existing Constitutional Division into Civil Division, thus creating one Division focused on internal clients of government and one Division focused on external clients and community.

IX ARCHITECTURAL RECOMMENDATIONS AND GLOBAL OPTIONS

In light of the complexity and number of criteria that come into play in assessing the strengths and weaknesses of options, and their implications for the Public Guardianship, no option will be perfect. This section of the report identifies the "best" option or options for fulfilling the vision of client-focused service generated by this review.

A. RECOMMENDATION FOR THE FAMILY SUPPORT PLAN

FSP OPTION III: Hybrid Model

This model emphasizes the transactional aspects of the FSP program. It assumes that there is no need for a regional office structure. It builds on the current directions to centralize financial, and trace and locate functions. The model relies on an improved telephone inquiry as the main information outlet for clients. It also maintains decentralized legal services and use of panel lawyers. As in the previous two models, enhancements should be made per the recommendations outlined in the report:

- introduction of new policies, procedures and legislation
- increased public education and awareness
- completion and implementation of an operational review

The elimination of the regional office structure permits a redeployment of resources which will result in a more administratively simpler and cost efficient organization. Resources will be directed to doing the right things, not just doing things right.

The focus of activity on collection will result in outcomes that meet the needs and wants of recipients.

B. RECOMMENDATION FOR THE SUPERVISED ACCESS PILOT PROJECT

Although based on a preliminary review, these services appear to fit more closely with mandate and activities of the Ministry of Community and Social Services. Many of the sites are currently attached to agencies which receive the bulk of their program funding through MCSS. Supervised access could be placed as another service within the context

of service contracts with MCSS, both to create advantages from an administrative point of view for the government and in order to place these projects within an appropriate continuum of community services.

C. RECOMMENDATION FOR THE VICTIM/WITNESS ASSISTANCE PROGRAM

VW OPTION III: Clarify Mandate by Acknowledging Dual Objectives 1) A Support to Victims and 2) A Better Prepared Witness who enables a Better Prosecution.

The Program will continue to provide direct services to victims of crime including such services as court preparation, information, support and referrals out to appropriate community agencies.

The Program will interact on the basis of equal partnerships with the Crowns, police, courts, and community agencies, founded on the commonality of goals and mutual needs in relation to victims as opposed to a supportive role to the "Crown System". Roles and expectations of the partners will be clearly laid out in the Provincial Protocol. Ministers will give the Provincial Coordinator permanent and recognized standing on the divisional management team and equal access to central services.

Of particular note, the Program and the Crown will work together to facilitate the healing and empowerment of the victim and give the victim the tools and knowledge to be prepared for the prosecutorial process.

Referral into the Program will be clearly based on needs of the victim as opposed to the winnability of the case.

Conversely, the Program will not perform administrative or prosecutorial functions for the Crown. For example, the Program will not act as substitute on mandatory Crown interviews with victims of sexual or child abuse or set appointments for the Crown.

This change in interaction will bring about a significant cultural change to the working environment between the Coordinator and the Crown. In particular, the Program will receive recognition as an equal partner, a significant departure from the supportive role to the Crown currently in use. Full and open communication, tactfulness and sensitivity will be key to a smooth relational transition.

The positive effect of the program in changing Crown and police attitudes and increasing their knowledge about victims, will continue in the partnership relationship.

Immediate "Information sharing" agreements with the "partners" will be crucial to the

the Program legitimate and automatic access to case information at the earliest possible point.

The Program will work in partnership with Courts Administration Division to develop, in a reasonable time, policies on: standardized interpretation services to victims, facility allocation, and technological sharing of information. Of note, the Ministry has standardized testing for qualification as accredited court interpreters who are available to provide service to offenders and victim/witnesses. To provide cultural interpreters specifically for victims will require additional funding for new training standards, testing and hiring of appropriate interpreters.

A Provincial Advisory Committee comprised of internal and external stakeholders and chaired by the Provincial Coordinator will be formed within a reasonable time frame. This Committee will act solely in an advisory capacity without impact on the day to day operation of the Program.

The Advisory Committee's initial task will be to assist and facilitate the Provincial Coordinator in the development a Provincial Victim/Witness Protocol, as soon as practical, in order to standardize and clarify roles and relationships, level of service and information flow as well as to ensure referral into the Program at earliest point.

Its overall mandate will be to ensure a consistent level of services across the province through adherence to provincial protocol customized to local needs. It will also act as a continuous conduit of best practices, suggestions and ideas from the sites to the Provincial Coordinator for policy and procedural development.

Specifically, the site Coordinator will, on the basis of local needs determined by consultation with community agencies, adapt the provincial protocol into a customized draft local protocol which will be forwarded to the Advisory Committee for acceptance with or without modifications requested.

The presence of the Advisory Committee will provide a framework, safeguard and legitimacy for the local site Coordinator.

Program will undergo gradual shift in focus assuming a coordinating role instead of case support where redundant.

Provincial Coordinator will coordinate a review of internal and external training practises and a review of public education practises to maximize effect on services to clients.

D. RECOMMENDATION FOR THE CRIMINAL INJURIES COMPENSATION

BOARD

CICB OPTION V: LIMIT MANDATE OF BOARD BY PROVIDE COMPENSATION TO CHILD VICTIMS ONLY

Strengths

- Allows Board to focus limited resources.
- Significantly reduces caseload and increases efficiency of Board.
- Focuses on most vulnerable victims including adults who were abused as children.
- Due to decreased caseload, Board could award higher and more meaningful awards to child victims.
- Public education would be focused on children.

Weaknesses

- No compensation for adult victims (other than the adults who were abused as children).
- Possible Charter/ equity implications.
- Requires legislative change.

Analysis

Although similar concerns will exist as under OPTION III, any decision to refocus on children may be more justifiable. This option would continue to allow adult victims to make applications relating to abuse suffered in childhood.

A mechanism for allowing older child victims (possibly 14 and over) to bring applications on their own behalf, could be explored. This would be a child-focused service, and the role of the Board in providing funding for interim counselling for children, where

required, could also be emphasized.

Over 600 (out of a total of over 3,000) applications relating to child abuse were received in 1992-93 by the Board. As the result of a special project for St. John's and St. Joseph's Training Schools, over 400 applications have been received from adults in relation to childhood abuse in those institutions alone. Although it is estimated by the Board that the number of applications relating to childhood abuse will increase, by limiting the mandate of the Board in this manner, the Board will be able to effectively deal with these cases. A decrease in the overall number of cases being heard by the Board will eventually lead to the ability of the Board to award higher and more meaningful amounts for pain and suffering.

By limiting the annual number of applicants, the Board, over time, would reduce the current backlog.

Although it is recognized that there may be many therapy and counselling services available for children in the community, this is the only program that would award compensation for pain and suffering. For many abused children, a meaningful lump sum award may provide a brighter future.

It is clear that the current mandate of the Board cannot be maintained if the Board hopes to address the current client-service concerns, including concerns relating to accessibility, timeliness, responsiveness, equity of access, and accountability. As a result, options for limiting and re-focusing the Board's mandate must be considered in light of these criteria. It is recommended that the option which re-focuses the mandate of the Board on children's issue be carefully considered. This option would allow the Board to focus on the most vulnerable in society, and to provide meaningful compensation to child victims, including adults who were abused during childhood.

E. RECOMMENDATION FOR THE OFFICE OF THE OFFICIAL GUARDIAN

OG OPTION IV: Enhanced Status Quo Model

The OG would be maintained as a separate office focused on delivery of services to children. The Office would be renamed, for example, the "Ontario Children's Lawyer" or the "Office of Child Representation"). The client group would be children and not mentally incompetent persons not-so-found, psychiatric patients or absentees which would become the exclusive responsibility of the PT (The one exception could be unborn and

unascertained beneficiaries in estates matters.)

In addition, the current mandate of the Office could be more focused to provide services on a truly last resort basis and only when they would be of benefit to the client. This proposal was explored in some detail earlier in Section V of the Report under cost constraint findings and will only be briefly summarized. It was suggested by informants that the OG should be given greater discretion through legislative amendments with respect to which cases he takes on to ensure that legal representation will only be provided when it will truly be of benefit to the client. Further, particularly with respect to property rights cases, it was proposed that the OG should only act where there is no one else "able" to represent the child or where the child's interests would not be adequately protected by another party to the litigation.

The delivery of services would be improved upon by the implementation of a number of the internal program reform options, discussed in Section V, for example:

- more extensive public education (e.g. information packages directed at different audiences; pre-recorded general information)
- clarifying the role of OG lawyers to ensure consistency in service delivery and to more clearly recognize the rights of children
- more intensive and ongoing training of outside professional staff, as well as in-house staff, and the need to provide regular training on fundamental subject matters such as interviewing children, mediation/settlement negotiation, and race relations/cultural differences
- setting of standards/guidelines when don't exist and fleshing out current standards/guidelines which govern professional staff
- increased monitoring of performance of outside professional staff (e.g. reduction of number of panel lawyers; increased reporting to office; broader publication of complaints process)
- creation of an interdisciplinary and regionally representative Advisory Committee, which would include client representatives, to assist the OG in setting guidelines, standards and maintaining a high level of service delivery.

F. RECOMMENDATION FOR THE OFFICE OF THE PUBLIC TRUSTEE

PT OPTION III: Enhanced Customer Service Model

There is broad consensus both within the PT and in the community that significant change is necessary in order for the mandate and responsibilities to be carried out in a manner satisfactory to clients. In addition, there is also broad consensus on the types of changes which are thought to be required. The changes discussed below do not assume or make specific provision for the PT to assume its new responsibilities under the Substitute Decisions Act, 1992. However they are wholly consistent with recommended action found elsewhere in this Report with respect to the new responsibilities of the PT.

First, the PT must have an effective and sympathetic advocate within the Ministry who understands its pressures and is committed to ensuring that adequate resourcing is made possible.

Second, additional administrative flexibility must be provided to ensure that resources needed to deliver a satisfactory level of service to clients is possible. This would use the existing administrative flexibility of the PT to support client service on a cost-recovery basis. Recent government constraint exercises threaten to strip the Office of resources at a time when it is by any measure starved of resources.

Both British Columbia and Quebec currently allocate fees to client services, and Alberta has announced legislation with the intent to do so. In Ontario, the original legislation appeared to offer this potential, but has not been exercised as such for a number of years. In any case, the desired result could be achieved by obtaining waiver of compliance with respect to certain Management Board guidelines and directives subject to appropriate terms and conditions. For a more fulsome discussion of the waiver of compliance approach and other possible but less favoured approaches, see recommendation 16 under Section VI.

Third, the mandate of PT must be refocussed to ensure that the office delivers an acceptable level of service to the primary clients of the office, the trust administration and crown estate clients. The recent history of the PT is that the office holder was unable to focus sufficiently on the diverse businesses of the office to manage as effectively as clients require the various responsibilities currently assigned to the office. There are specific recommendations regarding the need to refocus the mandate set out following this discussion.

Fourth, the Operational Review must be implemented. It is virtually impossible to estimate the resources which will be necessary to address the service deficiencies until one has conceived and implemented a plan to re-engineer the PT. In addition to and as part of the implementation of the Operational Review, a series of initiatives to improve

client service should be undertaken, including the establishment of community based boards with advisory and accountability responsibilities in each of the major program areas of the Office, and the creation of client service standards, benchmarks and manuals; the review of all front end processes of the Office, the establishment of consumer education, inquiry, complaint and research services to help ensure the delivery of client focussed service. These issues are addressed in the recommendations which are contained in Section V of this report.

Fifth, new premises must be found for the PT without delay. This issue has been discussed in the findings and does not need much additional treatment. Suffice it to say that the prospects for the successful implementation of the Operational Review are likely to be greatly enhanced by finding new premises for the PT.

Sixth, as discussed above as the administrative amalgamation with the Office of the Official Guardian option, certain key common administrative functions of the PT and the Office of the Official Guardian should be combined. The most likely candidate for combination in the short term would be the management of the respective client investment accounts.

A seventh and final key component would be to establish a flexible, community based presence for the PT. There is a broad consensus that the current centralized delivery system does not permit the PT to service its clients effectively. Even with the other improvements which are being recommended, service delivery of a satisfactory level cannot be achieved without creating a greater local presence for the PT. It is significant that while not every other public trustee has a local presence, those which are seen to be the most successful models, British Columbia and Quebec, do in fact have a local service presence. No specific form or structure for the localization of service is included. Rather the PT should be encouraged to implement a flexible cost effective system which uses to the extent possible existing local social justice or social policy delivery systems. For example, the recent long term care initiative presents an excellent opportunity for the PT to explore with the Ministry of Health the prospects for housing client agents of the PT in either existing agencies such as home care agencies, or placement coordination offices or ultimately in multi-service agencies. At the same time the PT could consider placing agents of the office in facilities in which the office has a significant number of clients, for example the Queen Street Mental Health facility. Alternatively, in smaller communities, the PT may wish to simply appoint part-time agents who would not have a permanent office but would be linked technologically with the central office of the PT.

G. RECOMMENDATION FOR THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

OPTION III: Coordinated PT and PG

Under this model, the office of the PG&T would seek to focus on the optimal service delivery mechanism from the perspective of the client. From the client's perspective, there should be only one staff member with who regular contact should be necessary.

By establishing a network of field officers dispersed throughout the province, as well as customer service representatives based in Toronto to deal with clients in the greater Toronto area, the office will take a necessary step to establish guardianship services. These representative can act for both trust and guardian clients.

In the case of trust clients, they can act as the eyes and ears of the trust staff. In the case of the guardianship role, they can play the front line function, supported, wherever necessary, by professional staff at head office or retained for the particular purpose at hand. Under this model and the other models discussed above, there can and should be some flexibility in designing an appropriate local delivery capacity. It could consist of new offices separate and distinct from other Attorney General or government of Ontario offices in general.

Some or all offices could be integrated into existing offices. Some possible choices include the court houses or one or more points in the long term care structure created recently by the Ministry of Health. In this regard, it has been suggested that home care offices, placement coordination offices or ultimately multi-service, organizations would be a wise and effective choice home for new local presence of the PG&T. In addition, the approach to be taken could be varied. A number of different approaches could be taken, including placing representatives into one or more of the alternatives identified above, or simply hiring agents in smaller communities to act in a part-time capacity, much like the social workers hired by the Office of the Official Guardian to write custody and access reports.

H. RECOMMENDATION FOR POSITIONING PROGRAMS IN THE MINIST

OPTION II C: Locate Programs Together in a Community Operations Division

A new Division can best achieve the advantages outlined above by placing the issues of clients and community on an equal footing at the senior management level. This reflects trends in other jurisdictions, which have placed community as a priority. The Division offers opportunities to create a holistic, preventive strategy which links these programs and builds upon mutual capability.

The implementation of this option would place client and community issues at the senior management table. It would create Divisional strength while retaining program integrity. This option appears to have been accepted by the majority of current program directors as a benefit to their activities. All of these programs stand to gain, but the program that has most to gain from this strategy is the Guardianship function, which would be implemented within a service culture.

X. ENHANCEMENTS TO RECOMMENDATIONS

Even a "best" option or options will have disadvantages. It is not enough to simply implement the "nuts and bolts" recommendations in order to improve client service, or even to architecturally restructure the organization to be more effective, efficient and responsive. At the same time, a number of enhancements must be made to the general way of doing business to realize the potential of the option.

Two types of enhancements have been identified as essential companions to change: They include internal measures for accountability, including standards, benchmarks, monitoring, and evaluations, and external accountability mechanisms, including those within government and those which may be developed as part of efforts for broader public accountability. They have grown out of the total quality control/quality service revolution which has recently hit the private and now the public sector, this report's criteria, as well as the team's discussions with program staff, various ministry experts, and clients themselves. Following each of the general descriptions of the enhancements below, some suggestions for the programs are made.

INTERNAL ACCOUNTABILITY: STANDARDS, BENCHMARKING, MONITORING, AND EVALUATIONS

As the recommendations of many of the programs in this review have suggested, the programs must spend time and effort developing standards for procedures leading to quality client service. These standards address both the practices and the level and quality of service which must be met consistently. Standards can be generated by examining the program's current performance, staff suggestions, union requirements, external stakeholder advice, other similar programs in the private and public sectors, and most importantly by involving clients in the entire process. The development of standards has been discussed throughout the report and will not be expanded upon here.

Once standards have been set and communicated to staff and to clients, continuous monitoring/reviews must be performed to ensure that standards are being consistently met. Benchmarking, however, is a process which goes beyond setting standards. It provides goals taken from the best practices of other organizations as the ideal to continuously work towards. Periodic comprehensive evaluations are also essential to round out the enhancements to the options. These provide extensive and contextual examinations of the program. All of these enhancements are discussed below.

Monitoring

Ongoing monitoring is an essential element in the provision and standardization of quality client focused service. Monitoring can illuminate where current service is meeting set expectations, where deviations are occurring across offices, and how close the program is to reaching its benchmarks. For monitoring to be meaningful, there must be explicit procedures and standards for the staff to follow and meet.

To make the most of monitoring opportunities, a review/evaluation framework should be put into place to ensure that:

1. the relevant questions about the business of the program are laid out. The use of the criteria outlined in this report will help ensure that these queries really do focus on service to the client;
2. the appropriate data is collected accurately on an ongoing basis to answer those questions;
3. specific processes and client service outcomes are identified for regular reviews.

Ongoing reviews or monitoring can take many forms: management reviews of general outcome statistics, financial reports, periodic unannounced quality control inspections, review of procedural check lists, customer research reviews, etc. Monitoring, however, should support and not overwhelm or interfere with quality client service. In some cases, this may mean the injection of additional resources to realize the long-term cost benefits of monitoring for good client service.

All of the programs under review perform some kind of monitoring, usually the compilation of statistical data for periodic management reports. Some, like the Official Guardian, are working at improving their information base. However, there remains much potential for ongoing data collection in each of the programs. Some notable suggestions which were drawn to our attention during the review, and which the program may not be following, are outlined below:

- all of the programs fall short in performing regular customer research reviews. These can include mail surveys, telephone surveys, in-depth personal interviews, customer focus groups, suggestion boxes and forms, strategic use of complaints, and customer follow-up
- monitor the number of compliments and complaints received by the program, including those received by external points of accountability (Ontario Ombudsman, etc.)

- track what happens to suggestions, compliments, and complaints from clients, as well as external points of accountability
- monitor the number of meetings with consumer groups such as SCOPE, People First, etc.
- monitor the number of meetings with agencies which serve the same clientele or are involved with the same issue
- track what happens to suggestions, compliments, and complaints from the community
- monitor caseload according to relevant indicators, including:
 - kind, type, or category
 - variance across offices
 - increase in caseload over previous year
- although certain kinds of demographic information on clients is regularly collected by some of the programs, fuller client profiles are necessary to indicate the clients being served and the clients who would benefit, but are currently not being served. Some confidential, non-intrusive method should be developed to track race, ethnicity, disability, gender, age (over 65 yrs.), official language proficiency, literacy rate, etc., for all of the programs
- keep appropriate case cost data
- pilot information packages to different communities, including the multicultural and aboriginal communities, before releasing it provincially
- monitor the number, duration, and types of inquiries using the 1-800 number vs. similar inquiries using other methods
- monitor overall response time for a customer service action
- monitor the time required for completion of each step or procedure leading to service delivery
- track the length of time required to process various types of cases from point of entry to point of completion
- prepare reports on case-activity, i.e. cases which have not been worked on in the past number of days, etc.

- track what happens to staff suggestions
- track the completion of staff training, especially that relating to improving client service, which is suggested on yearly employee appraisals or divisional training plans
- periodically check for courtesy and helpfulness of direct client service staff.

Some specific program suggestions which have been generated by the review process include:

Family Support Plan

- monitor Central Inquiry agents on a regular basis to determine if agents have had sufficient training to answer questions from clients
- generate indicators of the age of the arrears regularly
- once clients have connected with the Central Inquiry system, monitor telephone calls to ensure that clients who wish to speak to a live agent do so within a reasonable, standard amount of time
- analyze self-employed payor by type of business

Victim/Witness Assistance Program

- keep statistics on where referrals to the Program are from, or what source prompted the client to apply to the Program (eg. community agency, Crown Attorneys, police, friends or family)
- ask clients to complete an optional survey during the debriefing sessions
- monitor the earliest point of referral by tracking the date of the incident, the date of the referral to the Program, and the date of the first interview

Criminal Injuries Compensation Board

- record the number and offenses of victims who are unsuccessful in the initial screening process in procuring an application
- collect case costs and awards for the types of offence heard

- keep statistics on where referrals to the program are from or what source prompted the client to apply to the program (eg. community agency, Crown Attorneys, police, friends or family)
- collect further breakdown of cases, specifying domestic assault, child physical abuse and child sexual abuse.

Office of the Official Guardian

- keep meaningful statistics on cases, including the length of time to screen cases, assign cases, and resolve cases, as well as on the types of clients involved in each case
- seek regular and formalized input from clients and other stakeholders with respect to the quality of service it provides, for example through the use of surveys, questionnaires, and client focus groups

Office of the Public Trustee

- keep a client profile including authority date, authority type, facility type, age, asset value, and region in trust administration
- keep improved case activity reports, including number of transactions per year, etc., for all areas.

Benchmarking

Part of the success of these programs will depend on the commitment to continuously improve systems and strive for the best. To achieve the top potential, such competition leaders as the Xerox Corporation commonly use benchmarking. This is the process of setting goals based on the practices of the best performers in the fields. The programs under review should also be looking to the foremost achievers in the fields, whether in the private or the public sector, in order to set goals to reach for.

None of the six programs under review is unique. Our brief survey tells us that similar programs with the identical central mandate or different programs using the same administrative or client service processes can be found in public and private sectors across Canada. By carefully examining these programs for best practices, benchmarks can be determined. It would be important to remember, however, that comparability must be carefully considered before accepting another's practices.

For example:

per officer, frequency and type of client contact, fees charged, etc.

- the Family Support Plan could consider the successful collection methods of private collection companies. Time and percentage attainment of arrears given the age of the debt and the coldness of the trail could be sought, etc.
- the Supervised Access Pilot Project might discover from agencies with supervised access programs, like the Children's Aid Society, their success in catering to older children and in reaching out to various multicultural communities.
- the Victim/Witness Program could look to some of the non-government agencies which provide court preparation to specialized groups, e.g. children, victims of domestic abuse, etc. These agencies may have developed procedures and materials to best suit their clientele.
- the Criminal Injuries Compensation Board has equivalents, with varying mandates, in different provinces. Examining the time it takes from application receipt to compensation and the ways these boards streamline that process to reduce that interval might produce relevant benchmarks.
- the Office of the Official Guardian could examine community agencies providing service to children to determine the type, frequency, and duration of training around such issues as child abuse, interviewing children, etc.
- the Trust Administration section of the Office of the Public Trustee could look to the leading private trust companies and other public trustees, notably British Columbia and Quebec, for standards of client service, e.g., caseload.

Periodic Comprehensive Evaluations

Periodic comprehensive evaluations can improve program delivery in more substantial ways, provide for a greater level of accountability to senior management, and challenge program direction. Such thorough evaluations take staff power, time, and expertise. Every three to five years may be sufficient for a comprehensive evaluation if smaller reviews are ongoing. A review/evaluation framework accompanied by the regular collection of appropriate data will make the process less time consuming and burdensome for staff.

EXTERNAL ACCOUNTABILITY: SAFEGUARDS OR CHECKS AND BALANCES

Currently some systemic safeguards exist across all of these programs. These independent points provide the client with some protection of their rights and a last point of appeal within government. They can also provide the programs themselves with knowledge of where client dissatisfaction lies and in some cases with safeguards for the legitimate actions of staff. These independent points include: the courts; the Ontario Ombudsman; the Office of the Provincial Auditor; the Human Rights Commission; the legislature (such as the cabinet minister responsible, elected representatives, and standing committees on various issues). These need to be recognized and deeper partnerships developed in many cases. For example, the Family Support Plan must continue to work closely with the Ontario Ombudsman to reduce complaints; the Standing Committee on the Administration of Justice may have some impact on the Victim/Witness Assistance Program; and the proposed Office of the Public Guardian and Trustee must be very conscious of the Advocacy Project and develop an understanding of its implications on its operations.

New and fundamental questions surrounding client and community accountability raised by the criteria set out in this report remain. While suggestions have been made for each program, including mechanisms by which clients can appeal decisions and by which community stakeholders can be involved in advisory capacities to these programs in order to inform policy development, protocols, and design of responsive delivery, broader questions about the accountability of these programs to the public still need to be addressed.

The recommendations of this report have not touched on the fundamental accountability of these programs to the Minister of the Attorney General. In not doing so, they have left dormant questions about external points of control on these programs through a system of safeguards or checks and balance to ensure appropriate client service.

Given the range of activities undertaken within the mandates of these programs, no single solution is likely to be found. In some cases, accountability may best be ensured through conflict resolution mechanisms which allow clients and program staff to come to consensus about their differing expectations. In some, accountability may best be ensured through effectiveness audits performed by other government bodies. In other cases, particularly when program decisions have major impacts on clients' rights and well-being, accountability may best be ensured through independent points of control with the power to review decisions and ask for change and even redress.

These issues are new to the context of service in the public sector. Governments have traditionally felt that internal accountability of staff, within the broader context of the electoral process, has been sufficient to ensure program accountability. Today, however, a new epoch of public policy has emerged, one in which the dual pressures of cost-

effectiveness and community empowerment have changed the fundamental rules of the game. Within an emerging rights environment, questions of regulatory negligence mean that all programs should be concerned that they provide a level of service in accordance with their mandate. With a rising deficit, powers previously envisioned at the level of federal and provincial responsibility are being slowly disentangled. And with this devolution of responsibility, clients and community are seeking authentic roles in decision making.

These changes leave open up a number of questions, for governments more broadly, but also specifically for the programs under review here. Each of these questions needs to be examined as these services attempt to implement a vision of client-focused service.

1. How can we make appropriate use of mechanisms for decision-making at local levels?

It is necessary to be cautious in approaching the incorporation of participatory or empowering strategies, based on grass-roots models, into the more formally mandated and institutionalized service delivery sector. Otherwise, two unintended consequences may result. First, within a more formal setting, participatory structures may be reduced to tokenism. Second, grass-roots initiatives without formal ties or funding to mandated services may be treated as marginal interests in the process.

2. How can we guarantee accountability within local structures of integrated governance?

A more diffuse range of services delivered by a single point of responsibility may require diverse and complex reporting structures. Thus, coordination, both across services and to new lines of accountability at the community level and at the level of provincial and federal policy may be necessary.

3. How can we ensure that individual rights are not jeopardized within decision-making structures that claim to represent community interests?

Given local levels of decision-making, new issues arise in relation to the equitable and fair delivery of service. These include a responsiveness to smaller interests in the community. Questions need to be addressed about the development of community boards that represent the full range of community interests, and the role of the state in providing guarantees to fair access. This last issue involves the difficulty of determining mechanisms for representing diverse community interests, including criteria on who is to be represented, and policy guidelines for identifying new needs. Ultimately this may require the dedication of resources and services for groups which might otherwise be disenfranchised. While this may reflect their right to be heard, it will have cost consequences.

4. How can we handle the redefinition of roles and responsibilities within an integrated and community controlled program structure, including the roles of professionals, union employees, policy-makers, community members, and recipients of service?

Changing community structures to an empowered base may generate new tensions and conflicts among stakeholders. The involvement of traditional clients in the process of consultation must also be ensured. As levels of jurisdiction and expertise come up against more self-directed and autonomous community-based structures further tensions may be generated.

These fundamental questions suggest that our thoughts and actions surrounding program changes need to be based on a broader philosophical rationale, and that relevant checks and balances will be necessary as we restructure social services. By raising these issues we can address the capacity of current attempts at restructuring to create more effective, responsive, and empowered client service.

The criteria developed within this report provide one vehicle by which changes can be assessed. Examining them in greater detail in terms of the opportunity to ensure that the changes put into place are progressive in nature is one step. Using them as the basis of developing safeguards in the system is the further step.

XI. IMPLEMENTATION PLAN

A second level of enhancement to any recommended option or options involves a clearly articulated and well-executed implementation or business plan. This section of the report addresses the major steps necessary to carry out recommendations.

In order to achieve the opportunities presented in this report, the Team feels that the Community Operations Division should be implemented as soon as possible. This Divisional context can help all of these programs to position themselves on the continuum of supports consistently and in relation to other supports and services. In the unlikely event that a privatization option is chosen for one of these program (none is recommended), that program would not form part of the new Division.

The new Division will optimally support the strategic development of these programs, especially the implementation of the Substitute Decisions Act, 1992. Of all the programs which serve to benefit from the creation of this division, the PG&T has most to gain through a broader consultative approach to communities and clients, one which offers a sense of the alternatives through existing voluntary organizations and service providers, and which encourages individuals to seek their own solutions.

1. Constitute a New Community Operations Division as a Home for these Programs

Suggested Timetable

Decision to be made by SMC in August 1993.

Structure of the new Division should be designed as part of the Ministry's strategic review project and finalized by the early Fall 1993.

New Division to be in place and operational by end of 1993.

2. Choose an Architectural Option

Position on continuum of supports.

Focus on the central service requirements of your mandate.

Create vision/mission statements for your program.

Develop a strategic set of intents and objectives for with specific target dates, including issues related to the decentralization or recentralization of services at local offices, coordination of services, or other structural issues necessary within your option.

Suggested Timetable

Programs to decide on appropriate option by late Fall 1993.

Achievement of strategic objectives associated with the option will be ongoing.

3. Constitute a Program Advisory Committee

Work in coordination with other programs reviewed to ensure that memberships are not duplicated across committees.

Structure your committee to include external and internal stakeholders, including clients and staff of the program, as well as multidisciplinary and regional representatives.

Develop an Authentic Role for the Committee including refining the option, policy, protocol, ambassadors to community, help set standards and guidelines, resolving problems relating to service delivery, keeping activities and mandate abreast of the environment.

Suggested Timetable

As soon as programs have decided upon an appropriate option, recommendations with respect to membership on an Advisory Committee and estimated associated costs should be prepared and reviewed by SMC.

Advisory Committee should be in place by early 1994

4. Create Innovative, Learning Program Cultures

Create a client-focused organization which listens to staff and involves them in the changes underway.

Voice Mail

Physical Space

Suggested Timetable

Programs can begin implementing recommendations with respect to creating a client-focused organization immediately upon review of this Report.

Recommendations that have associated costs (e.g. voice mail and physical modification of space) may require external approval if additional funding is required. These should be identified as soon as possible and brought forward to SMC by the early Fall 1993.

The business of sustaining an innovative, learning program culture is ongoing.

5. Implement Changes which Directly Affect Client Service

Set standards.

Develop benchmarks.

Design Customer Research.

Develop sharper policies, procedures, manuals.

Release fact sheets.

Enhance telephone service.

Refine complaints process to ensure accountability to individual clients.

Suggested Timetable

Each program should prepare a comprehensive plan by late Fall 1993, directed at improving client service which would, among other things, identify the following: the proposed changes; which of the changes would benefit from the input of the Advisory Committee prior to implementation; and which could be implemented without such input and a timetable for their implementation.

6. Continue with the Longer Term Strategic Opportunities which the Community Operations Division Offers

Increase public education and media outreach.

Enhance training and human resource development.

Capitalize on economies of scale (substantive and administrative).

Examine opportunities for cost constraint.

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APPENDIX A

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APPENDIX B

COMMUNITY AND CLIENT CONSULTATIONS

These lists detail representatives of organizations, members of the judiciary, and the focus groups consulted. A number of individual clients and external stakeholders were also interviewed. Their names have been withheld to protect confidentiality.

FAMILY SUPPORT PLAN

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FOCUS (Focus on Children's Unpaid Support), Montreal
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SCOPE (Support Custody Orders for Priority Enforcement)
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Sudbury Focus Group

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Elizabeth Fry Society

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Sexual Assault Treatment Program

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Incest Survivors Group

Sudbury General Hospital

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Sexual Assault Crisis Centre

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Sudbury Women's Centre

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Victim Assistance Program

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Ontario Association of Children's Aid Societies

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Ontario Native Council on Justice

Carol Montagnes
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The Metropolitan Toronto Special Committee on Child Abuse

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Toronto Native Child and Family Services

Kenn Richard, Executive Director
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Women in Transition - Spadina House

Patricia Selby, Child Advocate Worker

Members of the Judiciary

Judge David Main

Judge Joe James

Madam Justice Lynn King

Judge Peter Nasmith (Barrie)

Judge Allan Ingram (Peterborough)

Madam Justice Judith Little (Kenora)

Madam Justice Judith Grier

Focus Groups

Catholic Children's Aid Society of Metropolitan Toronto
Focus Group of Social Workers
26 Maitland Street
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M4Y 1C6
Tel. (416) 925-6641 Fax. (416) 925-8087

Children's Aid Society of Metropolitan Toronto
Focus Group of Social Workers
33 Charles Street East
Toronto, Ontario
M4Y 1R9
Tel. (416) 924-4646 Fax. (416) 324-2485

Pape Avenue Resource Centre
Youth Edition Committee
469 Pape Avenue
Toronto, Ontario, M4K 3P9

Women's Support Group Committee,
Family Service Centre of Ottawa-Carleton
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Ottawa, Ontario K1Y 0N6
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Other Jurisdictions

Department of Family & Social Services
Bernd Walter, Children's Advocate
Alberta

Gordon Cuff, Public Guardian
Alberta

Family Advocate Program, Ministry of the Attorney General
Fiona St. Clair
British Columbia

Family Advocate Program, Ministry of the Attorney General
Jerry McHale
British Columbia

PUBLIC TRUSTEE

Advocacy Centre for the Elderly (ACE)

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Advocacy Resource Centre for the Handicapped (ARCH)

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Advocacy and Guardianship Unit, Ministry of Community and Social Services

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Alzheimer's Association of Ontario

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Angela Morris, Chair, Public Policy Committee
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Canada Trust

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Canadian Mental Health Association

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Canadian Centre for Philanthropy

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Huronian Regional Centre
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Madame Justice Judith Grier

McGill University
Prof. David Stephens, Law Reform Commission of Ontario, Charities Project

Ministry of the Attorney General
Steve Fram
Joan Lenard

Ministry of Health
Gilbert Sharpe, Director of Legal Services
Janice Crawford, Deputy Director, Legal Services Branch

Ministry of Energy & the Environment
Jack Johnson, Director of Legal Services

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Office for Disability Issues, Ministry of Citizenship
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Ontario Head Injuries Association

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Ontario Coalition of Seniors

Bea Levis
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Patients' Rights Society

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Psychiatric Patient Advocacy Office

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Queen Street Mental Health Centre

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Royal Trust

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Focus Group


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Other Jurisdictions

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Des Services Collectifs 
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Maitre Gagnon,
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Bruno Maheu, Directeur de la Protection
Public Curator, Quebec

Myrna Hall, Public Trustee
Office of the Public Trustee, B.C. 

Pearl McKenzie, Executive Director
North Shore Community Services, B.C.

Dr. Steve Kline, Chair
Project to Review Adult Guardianship, B.C.

Al Etmanski, Co-Chair
Personal Supports
Project to Review Adult Guardianship, B.C.

Mark G. Perry, Policy Analyst
Office of the Public Trustee, B.C.

John Woods, Acting Director of Estates Administration
Office of the Public Trustee, B.C.

Robert Drew, General Counsel
Office of the Public Trustee, Alberta

Jack Klinck, Public Trustee
Office of the Public Trustee, Alberta

Bill Polglaze, Assistant Public Trustee -
Finance and Administration
Office of the Public Trustee, Alberta

Mary-Ellen Wellsch, Public Trustee
Office of the Public Trustee, Saskatchewan

APPENDIX C

INTERVIEW, FOCUS GROUP, AND DATA COLLECTION GUIDES

SOCIAL JUSTICE REVIEW DISCUSSION GUIDE FOR INTERVIEWS

1. Nature of Services and Clients

- General introductory questions to be asked concerning the nature of the program's services and clients for purposes of clarification.

2. Difficulties with Service Delivery

(a) Problems Faced by the Organization

- what problems/barriers does your organization face in delivering service?

(e.g. nature/vulnerability of client; inadequate resources; too centralized; high turnover of staff)
- do you have any suggestions as to how those barriers might be removed or, at least, lessened?

(b) Problems Faced by Interviewee

- what problems do you face in your job?

(e.g. too much work - too heavy a caseload; too many people to supervise; too many calls to answer and calls take too long)
- do you have any suggestions about what would help you to do your job better?

(c) Problems Faced by Others in the Organization

- what major problems do you feel that others employed by your organization face in doing their job?
- suggestions as to what would assist them to do their job better

3. Discussion of Tenets of Client-Focused Service Delivery

- what do you see as the most important tenets of child-focused services?

- how are the following tenets of client-focused services met or not met by the particular program (positives and negatives)?
 - accessibility to public (e.g. handicap accessible? does the public know about the services; how is the program publicized; are there sufficient offices (transportation issues); how is the program sensitive to the disadvantages/culture of their client group?)
 - timeliness of meeting client needs (e.g. is there a case backlog; what is the average turnaround time for dealing with a case?)
 - responsiveness (does the service provide what the client needs; how is it lacking - e.g. does it provide counselling services or refer clients to counselling services?)
 - reasonable cost (only for supervised access and public trustee) - [note: cost is also an accessibility issue]

4. Client Expectations of Service Delivery

- in your view, does your program meet client expectations generally?
- in what ways does it meet expectations?
- in what ways doesn't it meet expectations; how could this be improved upon?
- are client expectations reasonable for the level of service provided by the program?
- has your program been modified in any way as a consequence of client expectations or demands; how would you modify your program to meet client expectations/demands?
- what would listening to clients mean to you in the context of your program? (e.g. setting up a community-based advisory committee; meeting with client advocacy group; suggestion boxes)

5. Standards for Service Delivery

- how do you ensure that services are delivered as effectively as possible; what standards of quality have been set?

(e.g. ongoing training of staff; standards with respect to case turnaround time; close supervision of staff to ensure that the standard with respect to case

turnaround time is being met)

- are the standards reviewed from time to time?

6. Client Empowerment

- what does client empowerment mean in the context of your service?
- is client empowerment a goal of your service; if not, should it be?
- do you see your service empowering clients?

7. Program Evaluation

- does your office engage in any type of program evaluation/policy development aimed at improving the program/service?
 - if so, what; does the program establish benchmarks
 - if not, why?

8. Accountability

- how is your organization accountable to:
 - government
 - clients
 - public

(e.g. annual report; government funds organization; client complaints to Ombudsman, Human Rights Commission)

- should/could your program/service be made more accountable? To whom?

9. Cost-Savings Initiatives

(a) Reducing Demand on Services

- does the office consider ways of reducing the demands on its services and making recommendations to the government in this respect?

(e.g. policy development/lobbying for crime prevention; increased counselling services; in case of public trustee/official guardian, encouraging others to serve as substitute decision makers; in case of

official guardian, lobbying to have its services made compulsory, rather than mandatory as it did in 1987 (reports on custody and access) and 1990 (minor's settlements)

(b) Other Ways to Cut Costs

- does the office consider ways to save money that would not impact negatively on delivery of client services?

(e.g. regular reallocation review exercises - e.g. stopping certain services that are duplicative/available elsewhere in the community (counselling?))

- issue of user fees

10. Organizational Issues

(a) Relationship with the Ministry

- is the reporting relationship adequate; could it be improved upon?

(e.g. would it be more reasonable to report to a different Division in the Ministry);
- does the Ministry provide adequate support; could this be improved upon?
- should your program fall within the jurisdiction of another ministry? Why? How would this improve service delivery?

(b) Internal Organizational Issues

- could your organization be better organized internally to improve upon service delivery?

(e.g. layering to get rid of a level of management as it slows down process; or need for an additional level of management (Deputy) because approval is being bottlenecked)
- what internal organizational changes would make service delivery worse?

(c) External Organizational Issues

- what does your organization have in common with some/all of the other social justice programs being considered that might suggest some type of linkage?

(e.g. services have to be delivered province-wide; linkage with the court; services necessary as a result of family breakdown; clients are "vulnerable"; need common administrative/ professional staff resources such as lawyers, social workers and support staff; need to communicate with other social justice programs)

- do you have any views/suggestions about pooling resources with other social justice programs in order to improve service delivery?

(e.g. regionalizing certain programs and sharing common administrative resources, professional staff resources (lawyers, social workers, etc.), information technology, office space, training, policy development resources, etc.)

- what external organizational changes would make service delivery worse?

11. Management of Information/Information Technology

- what are the information technology needs - how would this improve service delivery?
- what information technology resources are in place/planned?
- pros and cons of sharing information technology resources with other social justice services?

12. Positive Aspects of the Program

- what does the program do now that is good and should not be altered?

SOCIAL JUSTICE
QUESTIONS FOR AGENCY EXTERNAL STAKEHOLDERS
FAMILY SUPPORT PLAN

General

1. Please give me a brief description of your organization.
2. What do you know about the Plan? From where did you get your initial information?

Use of Family Support Plan

3. What contact do you have with the Plan? How often?
4. What percent of your clientele uses the Plan?
5. Are there clients who need the service but do not get it? Who? Why?

Impressions of the Program

6. What do you think of the role that the Plan plays?
7. What are your clients expectations of the Plan? From where have these expectations come? Are these expectations being met?
8. What do your clients need from the service?
9. Have you seen any of the information materials about the plan (television ads, pamphlets)? What were your impressions of the public education?
10. What is the level of client satisfaction? On what do you base this assumption on?
11. What other comments do you have about its service to clients?

timeliness
accessibility
reliability
responsiveness
empowerment
12. What do you think of the Central Inquiry System?

13. What functions do the regional offices serve? Are there too many, not enough offices? What function do they serve that cannot be met by telephone contact with a central office?
14. What works really well in the Plan?
15. What improvements could be made?
16. What is the community feeling about the Plan?
17. Do you ever have cause to make suggestions to the Plan? Through what channels do you make the suggestion? How do you feel that your input is taken? Do you see any changes as a result?

Alternatives

18. Can you see alternatives for assisting your clients?

April 15, 1993

SOCIAL JUSTICE REVIEW
QUESTIONS FOR FOCUS GROUP OF RECIPIENTS
FAMILY SUPPORT PLAN

1. Explanation of the review.
2. Introductions with explanation of how long each participant has been involved with SCOE or the Family Support Plan.
3. What have been your experiences with the Family Support Plan?

timeliness
accessibility
reliability
responsiveness
empowerment
4. What are the weaknesses of the Plan? What improvements do you suggest?
5. Have you tried to contact the Plan with complaints, compliments, or suggestions of improvement? Through what channels? What was the outcome?
6. What are the strengths of the Plan?
7. What linkages would you like to see between the Plan and groups like SCOPE?
8. What final recommendations do you have?

May 5, 1993

**SOCIAL JUSTICE REVIEW
QUESTIONS FOR AGENCY EXTERNAL STAKEHOLDERS
VICTIM/WITNESS ASSISTANCE PROGRAM**

General

1. Please give me a brief description of your organization.
2. What do you know about the Victim/Witness Assistance Program?

Use of Victim Witness Program

3. What contact do you have with the Victim/Witness Program?
4. What percent of your clientele uses the Program.
5. Are there clients who need the service but do not get it? Who? Why?
6. Do all clients have equal access/ access equally to Victim/Witness Program (disabled especially mentally challenged, aboriginal, racial or ethnic minorities, language difficulties)?
7. What are your clients' needs of the service?
8. Does the Program refer clients to you? If so, is the referral appropriate? Do you have any comments about the referral process?
9. Have you attended any public education given by the Program? What were your impressions of the public education?
10. Has the Program performed a coordinating function with other agencies around victims and witnesses?

Impressions of the Program

11. What do you think of the role that the Program plays?
12. What works really well in the Program?
13. What improvements could be made?

What can community do you have about the service?

timeliness
accessibility
reliability
responsiveness
empowerment

15. What is the level of client satisfaction?
16. What is the community feeling about the Program?
17. Do you ever have cause to make suggestions to the Program? Through what channels do you make the suggestion? How do you feel that your input is taken? Do you see any changes as a result?

Alternatives

18. Do you know of similar services within the community? What are they? Why have they sprung up? Do they meet clients' needs?
19. Are there alternatives for assisting your clients?

April 13, 1993

**SOCIAL JUSTICE REVIEW
QUESTIONS FOR AGENCY FOCUS GROUP
VICTIM/WITNESS ASSISTANCE PROGRAM**

1. Explanation about the Review.
2. Introduction of participants with a brief explanation of the contact they have with the Victim/Witness Assistance Program.
3. Who are your clients? What are the needs of your clients with regard to court preparation, assistance through the court process, etc.
4. How well is the program meeting client's needs?
 - providing a needed service
 - sensitivity
 - responsiveness to clients' needs
 - listening to clients
 - accessibility
 - flexibility
 - equal access
 - timeliness
 - empowerment
 - clarity of expectations
 - community links
 - referrals
 - public education
 - openness to community input
 - coordination
 - listening to clients
5. Are there other areas that are working well that have not been mentioned?
6. Are there other areas that need improvements that have not been mentioned? What recommendations would you have?
7. Are there any alternatives to serve the needs of clients?
8. What are your impressions of the Criminal Injuries Compensation Board?

April 28, 1993

SOCIAL JUSTICE 271277
QUESTIONS FOR VICTIM/WITNESSES
VICTIM/WITNESS ASSISTANCE PROGRAM

1. How did you find out about the Victim/Witness Assistance Program? How were you referred?
2. What have been your experiences with the Program?

needs met
timeliness
accessibility
reliability
responsiveness
empathy/understanding
empowerment
3. What worked really well in the Program/ what did you really like or appreciate?
4. What are the weaknesses of the Program? What improvements do you suggest?
5. Have you tried to contact the Program with complaints, compliments, or suggestions of improvement? Through what channels? What was the outcome?
6. Did you apply for compensation through the Criminal Injuries Compensation Board? What was its service to you like?

April 28, 1993

**SOCIAL JUSTICE REVIEW
QUESTIONS FOR EXTERNAL STAKEHOLDERS
CRIMINAL INJURIES COMPENSATION BOARD**

1. What is your experience/knowledge of the Board?
2. How do your clients find out about the Board?
3. What are your specific concerns and your clients' concerns relating to:
 - responsiveness
 - accessibility
 - timeliness
4. Does the Board do enough public education?
5. Do you have any comments on the forms being used?
6. Do you have any suggestions on how the process can be expedited?
7. Do you have comments on whether oral or documentary hearings are appropriate?
8. Do you have comments on the role of the Board re: counselling?
9. What is your view of awards for pain and suffering?
10. Do you have any other suggestions or examples?

May 1993

**SOCIAL JUSTICE REVIEW
QUESTIONS FOR AGENCY EXTERNAL STAKEHOLDERS
OFFICIAL GUARDIAN**

(used for some interviews; others followed "Discussion Guide for Interviews")

General

1. Please give me a brief description of your organization.
2. What do you know about the Office of the Official Guardian? From where do you get your information?

Contact with the Official Guardian

3. What contact do you have with the Official Guardian? In what circumstances? How often?
4. Are you involved in court cases or go to court?
5. What percent of your clientele has an OG?
6. Are there clients who need an OG but do not get it? Who? Why? Do all clients have equal access/ access equally to Victim/Witness Program (disabled especially mentally challenged, aboriginal, racial or ethnic minorities, language difficulties)?

Role of the Official Guardian

7. What do you think of the role played by the OG in protecting children's interests?
8. What is beneficial about the role of the OG?
9. What should the role be:
to protect the best interests of the child?
to protect the wishes of the child?
10. What are your clients expectations of an OG? From where have these expectations come? Are these expectations being met?
11. What do your clients need from the OG?

Comments on Service/Representation

12. What is the level of client satisfaction? On what do you base this assumption?

13. What other comments do you have about its service to clients?
- timeliness
accessibility
reliability
responsiveness
empowerment
14. What is your perception of panel lawyers and the training and monitoring they receive?
15. What is your perception of the social workers and the training and monitoring they receive?
16. What works really well with the OG service?
17. What improvements could be made?
18. What communication or linkages does the Official Guardian have with your agency?

Alternatives

19. Do you ever have cause to make suggestions to the Office of the Official Guardian? About what? Through what channels do you make the suggestion? How do you feel that your input is taken? Do you see any changes as a result?
20. Can you see alternatives for assisting your clients?

April 16, 1993

SOCIAL JUSTICE REVIEW
QUESTIONS FOR FOCUS GROUP OF TEENAGERS
OFFICIAL GUARDIAN

1. What is an Official Guardian?
2. How many of you have or have had an Official Guardian?
3. What is your lawyer supposed to do for you?
4. How often do you or did you meet with your lawyer? Do you or did you have other contact by mail or telephone? Is this enough, too much, or not enough contact?
5. Where do you or did you meet with him or her? Was this convenient for you? Was this a comfortable atmosphere?
6. Do you or did you feel comfortable talking to your lawyer?
7. What did they explain that their role was? Did they say they were to represent your wishes or your best interests as they perceived them? What do you think: should Official Guardians represent your wishes or your best interests?
8. What else do you or did you talk about?
9. Did you go to court?
10. If you went to court, did your lawyer say what you wanted him/her to say?
11. Did having a lawyer make a difference to you?
12. Were you pleased with your lawyer?
13. What was good about your lawyer?
14. What would a good OG be like?
15. What would you like improved or changed?

May 10, 1993

SOCIAL JUSTICE REVIEW DATA COLLECTION

All data to be collected, where possible, on individual programs within geographical regions of an organization.

Case Load (Comparative over 2-3 years if possible)
(By mandate if applicable)
(Note Data Collection Method)

- ▶ active cases by region
- ▶ new cases (annual) by region
- ▶ completed cases (annual) by region
- ▶ case turnover
 - ▶ case backlog, waiting list
 - ▶ per staff member at front line
 - ▶ cost per case

Case Enquiry

- ▶ in person
- ▶ by telephone
- ▶ by mail/fax

Confidentiality considerations to be noted.
Chronology of enquiry to be noted.

Staffing

Obtain organization chart.

Number of Staff

- ▶ management
- ▶ program delivery
 - ▶ front line support (including qualifications)

- ▶ second level of support
- ▶ specialized staff social workers, investigators, etc.
- ▶ administrative support

Time allocation (selected basis, expressed in percentage terms)

- ▶ Client - Direct Contact
- ▶ Client - Client matters
- ▶ Administration

Training

Number of staff to receive training

Number of hours per staff member

- ▶ external
- ▶ in-house
- ▶ technical (especially training related to client service)
- ▶ other

Training Costs

Financial

Expenditure data

Organization - Actual 91-92
- Estimates 92-93

Cost Centre - Actual 91-92
- Estimates 92-93

Functional

- ▶ program delivery
- ▶ administrative support
- ▶ management

(If staff data is available on this basis then salary and benefits could be allocated along with direct program expenditures. Overhead to be allocated based on salary and benefits).

Travel costs

Communications Expense (Public Education)

In addition to the above generic data, additional data may be collected for specific purposes.

APPENDIX D

SOCIAL JUSTICE REVIEW ADVISORY COMMITTEE MEMBERS

SOCIAL JUSTICE REVIEW ADVISORY COMMITTEE MEMBERS

Bob Beaudoin	Regional Director, Courts Administration, Eastern Regional Office , MAG
Marnie Brown	Director of Divisional Planning & Administration, Criminal Division, Ministry of the Attorney General
Harvey Brownstone	Acting Director, Family Support Plan, Ministry of the Attorney General
Michael Ennis	Assistant Deputy Minister, Population Health and Community Services System Group, MOH
Alison Fraser	Acting Director, Policy Development Program Design Branch, MCSS
Brock Grant	Executive Coordinator, Seconded Legal Services, Ministry of the Attorney General
Susan Himel	Public Trustee, Acting Ministry of the Attorney General
Susan Lee	Provincial Coordinator, Victim/Witness Program Ministry of the Attorney General
Joan Lenard	Manager, Planning and Operations, ADAG-Civil Ministry of the Attorney General
Sharon McClemont	Director, Policy & Research Branch Ministry Responsible for Women's Issues, OWD
Leslie Macleod	Assistant Deputy Attorney General, Civil Law Division, Ministry of the Attorney General
Willson McTavish	Official Guardian Ministry of the Attorney General
Priti Sachdeva	Strategic Planning Committee Ministry of the Attorney General
Mary Beth Valentine	Advocacy Program Ministry of Citizenship

APPENDIX E

SOCIAL JUSTICE REVIEW TEAM

SOCIAL JUSTICE REVIEW TEAM MEMBERS

DIRECTOR:

Suzanne Peters Consultant

TEAM MEMBERS

Janice Crawford	Deputy Director, Legal Services Branch, Ministry of Health
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Ann Merritt	Deputy Director, Policy Development Division, Ministry of the Attorney General
Minette Nortjé	Administrative Assistant
Sara Sandhu	Senior Policy & Program Officer, Courts Administration
Irene Schaeffer	Coordinator, Special Projects, Management Support Branch
Donna Shiple	Articling Student Ministry of the Attorney General
M-J Wason	Project Assistant
Petra Wilkes	Manager, Client Services, CTSB Ministry of the Attorney General
Marg Wilson	Education Coordinator, Civil Division, Ministry of the Attorney General

APPENDIX F
TERMS OF REFERENCE

TERMS OF REFERENCE

SOCIAL JUSTICE REVIEW

MINISTRY OF THE ATTORNEY GENERAL

PURPOSE:

The primary objective of this project is:

to develop a vision of client-focused service, including rights and well-being, which can best direct quality service for vulnerable peoples within a coherent, integrated framework.

To achieve this, the project will:

review potential organizational options which stem from this vision, both in terms of central ministry functions and regional activities, including an analysis of the potential for integration as follows:

- **at a front-line delivery level, including potential co-location in regional offices**
- **in administration and policy development within the central ministry**
- **in strategic planning**
- **in human resource terms, including appropriate roles and responsibilities, recruitment and training;**

analyze the cost-effectiveness of these options, given current government pressures and priorities;

forward recommendations for reorganization, including bench marks which assess success;

assess the impacts of these changes on current organizational cultures, myths, and ideologies;

develop an implementation plan to achieve the recommendations for cultural and organizational change in fostering a visionary, quality service model.

SCOPE:

The project will consider the following programs in detail:

The Office of the Public Trustee, including legislative provisions for substitute decision-making forthcoming in July 1994

Office of the Official Guardian

The Family Support Plan

The Victim/Witness Assistance Program.

Other related programs will include the Supervised Access Pilot Project and the Criminal Injuries Compensation Board. These will be considered in lesser detail. While all of these programs are currently delivered within the Ministry of the Attorney General, the review will consider opportunities for providing better client service by structuring services within other government entities.

METHODOLOGY:

While this project is not of sufficient duration to comprise a formal program review or policy development exercise, it uses components of evaluation, management audit, and policy research. Given tight deadlines, the project will need to be very focused and selective in gathering information. However, all stakeholders from concerned programs as well as staff throughout the Ministry are encouraged to contact the project team with their suggestions and ideas.

Anticipated task activities of this project will include:

- review of the recent Provincial Auditor's findings and methodology in relation to the above programs;

- review of information collected in a number of other exercises currently under way in the Ministry, including Ministry-wide Strategic Planning, a Review of Civil Legal Services, the Official Guardian Review, the Public Trustee Operational Review, and others. In order to ensure coherence and avoid duplication, documentation and research developed in the course of these exercises will be made routinely available to this task group;

- review of current program mandates for consistency, redundancy, and congruence with emerging legislation;

- review of internal informant perspectives through selected interviews with program staff within the Ministry;

- review of external informant perspectives through selected interviews and focus groups with program recipients, their representatives, community agencies and advocates;

- review of mandate and structure in other jurisdictions;

- review of program delivery statistics related to the appropriateness, responsiveness, and quality of service across different regions, including best and worst practices;

review of program budget data related to the cost-effectiveness of regional operations;

other materials as necessary.

Review of file data is contingent on the robustness of data systems within the Ministry. When appropriate, recommendations for data collection and systems will be generated.

SPONSOR:

George Thomson, Deputy Attorney General
Ministry of the Attorney General

DIRECTOR:

Suzanne Peters, Consultant

TEAM:

Janice Crawford (Deputy Director, Legal Services Branch, Ministry of Health)
Don Forsey (Manager, EDP Audit, Audit Services Branch, MAG)
Jeff Graham (Senior Counsel, Legal Services Branch - Ministry of Finance)
Ann Merritt (Deputy Director, Policy Development Division)
Minette Nortjé (Administrative Assistant)
Sara Sandhu (Senior Policy & Program Officer, Courts Administration)
Irene Schaetfer (Coordinator, Special Projects, Management Support Branch)
M-J Wason (Project Assistant)
Marg Wilson (Education Coordinator, Civil Division, MAG)

ADVISORY COMMITTEE:

Advisory Committee meetings will take place every two weeks throughout the course of the project. Current findings from the review will be shared with members in order to generate their sense of the implications of these materials.

Members of the Advisory Committee are:

Bob Beaudoin (Regional Director, Courts Administration - Eastern Regional Office)
Marnie Brown (Director of Divisional Planning & Administration, Criminal Division)
Harvey Brownstone (Acting Director, Family Support Plan, MAG)
Michael Ennis (Assistant Deputy Minister, Population Health and Community Services System Group)
Alison Fraser (Acting Director, Policy Development Program Design Branch)

Brock Grant (Assistant Deputy Attorney General, Civil Law Division)
Susan Himel (Public Trustee, Acting)
Susan Lee (Provincial Coordinator, Victim/Witness Program)
Joan Lenard (Manager, Planning and Operations, ADAG-Civil)
Sharon McClemon (Director, Policy & Research Branch)
Willson McTavish (Official Guardian)
Priti Sachdeva (Strategic Planning Committee)
Mary Beth Valentine (Advocacy Program)

Others to be announced

DELIVERABLE:

The deliverable will be a report intended to guide the delivery of client-focused services to vulnerable peoples in Ontario, with special emphasis on the implementation of the upcoming substitute decision-making program within the context of ministry activities. The report will recommend options for a responsive, high quality service framework with the greatest cost-effectiveness at both central and regional levels of administration.

DURATION:

This project commenced on February 26, 1993 and will end on May 31, 1993.

LOCATION:

Fourth Floor, 720 Bay Street, Toronto, Ontario M5G 2K1

CONTACT:

Your ideas and suggestions are welcome. Telephone 326-2491.

6 April 1993

APPENDIX G

REGIONAL MODEL OF OFFICIAL GUARDIAN

Official Guardian's Office

A. Local Services Deli Model - 14 Regional Offices

The following addresses the costs of the Official Guardian operating 14 regional Offices. The caseload and staffing assumptions are based on information received from the Office.

The cost of operating this regional model with the existing Head Office structure is estimated at \$18,127,578. In addition, initial year leasehold improvement costs of \$685,000 would be incurred.

Regional Office structure as attached	11,504,178
Accommodation Costs	685,000
Estimated Head Office Costs	5,938,400

Total Costs	18,127,578
	=====

B. Present Centralized Operation

Assumes the existing Head Office structure with fee for service persons utilized across the province.

1725 Custody Access cases @	\$1,025	1,768,125
1824 Child Protect. cases @	\$1,380	2,517,120
751 Prop. Rights cases @	\$0 (1)	0
1261 Official Guardian Reports @	\$940	1,185,340
115 Social Work Assists @	\$1,240	142,600

		5,613,185
1993-94 estimates excluding costs of legal representation for children		5,938,400

		11,551,585
		=====

(1) Legal costs recovered through court awarded costs.

OFFICIAL GUARDIAN'S OFFICE
REGIONALIZATION (14 OFFICES)

Region/Office	Cent/East Coburg	Cent/Sth	Well/Wat	Cent/East Barrie	East 1 Kingston	East 2 Ottawa	East 3 Ottawa
Caseload							
Custody/Access	140	74	103	161	83	123	20
Child Prot.	145	77	74	80	146	157	27
TOT. PERS. RTS.	285	151	177	241	229	280	47
Lawyers reqd. (1)	4.8	2.5	3.0	4.0	3.8	4.7	0.8
PROPERTY RTS.	45	36	21	38	21	54	3
Lawyers reqd. (2)	0.2	0.2	0.1	0.2	0.1	0.3	0.0
Tot Lawyers Req (11)	5	3	3	4	4	5	1
Sec./Suppt Reqd.	2	1	2	2	2	2	0
OFF. GUARD. REP	90	67	78	131	41	50	70
SOC. WK. ASST.	5	1	0	9	4	4	1
Soc. Wks. Reqd. (4)	3	2	2	4	1	2	2
COSTS							
Lawyers Sal	433,000	259,800	259,800	346,400	346,400	433,000	86,600
Soc. Wks. Sal.	155,100	103,400	103,400	206,800	51,700	103,400	103,400
Office Manager	40,500	40,500	40,500	40,500	40,500	40,500	40,500
Sec./Supp. Stf	70,400	35,200	70,400	70,400	70,400	70,400	0
Benefits	132,810	83,391	90,079	126,179	96,710	122,987	43,795
O.D.O.E.	69,900	43,890	47,410	66,410	50,900	64,730	23,050
Total Costs	901,710	566,181	611,589	856,689	656,610	835,017	297,345

OFFICIAL GUARDIAN'S OFFICE
REGIONALIZATION (14 OFFICES)

Region/Office	South-West London	Hamilton Hamilton	Cent-West Oakville	North-East Sudbury	orth-West hunder Ba	entral-Ws Orangeville	Toronto Toronto	TOTAL
Caseload								
Custody/Access Child Prot.	137 283	254 179	147 47	94 88	38 114	58 57	293 350	1725 1824
TOT. PERS. RTS.	420	433	194	182	152	115	643	3549
Lawyers reqd. (1)	7	7	3	3	3	2	11	59
PROPERTY RTS.	79	23	29	24	13	7	358	751
Lawyers reqd. (2) (11)	0.4	0.1	0.1	0.1	0.1	0.0	1.8	3.8
Tot Lawyers Req	7	7	3	3	3	2	13	63
Sec./Suppt Reqd.	4	4	2	2	1	1	6	31
OFF. GUARD. REP SOC. WK. ASST.	21 2	58 3	162 3	126 1	26 0	16 3	325 79	1261 115
Soc. Wks. Reqd (4)	1	2	5	4	1	1	12	39

COSTS

Lawyers Sal. (5)	606,200	606,200	259,800	259,800	259,800	173,200	1,125,800	5,455,800
Soc. Wks. Sal. (6)	51,700	103,400	258,500	206,800	51,700	51,700	620,400	2,016,300
Office Manager (10)	40,500	40,500	40,500	40,500	40,500	40,500	40,500	567,000
Sec./Supp. Staf (7)	140,800	140,800	70,400	70,400	35,200	35,200	211,200	1,091,200
Benefits (8)	159,448	169,271	119,548	109,725	73,568	57,114	379,601	1,460,848
O.D.O.E. (9)	83,920	89,090	62,920	57,750	38,720	30,060	199,790	913,030
Total Costs	1,082,568	1,149,261	811,668	744,975	499,488	387,774	2,577,291	11,504,178
(5) Mid-Range Crown Counsel 2				(8)	19% of Salaries		(11) Portion of salary	
(6) Top social worker 2				(9)	10% of salaries		costs to be recovered	
(7) Top OAG-8				(10)	Mid-range AM 14		through court costs.	

APPENDIX H

JURISDICTIONAL RESPONSIBILITIES OF OFFICIAL GUARDIAN AND PUBLIC TRUSTEE

Primary Legal Responsibilities		
A. Personal Rights	O.G.	P.T. / P.G.T.
1. <u>Family Law</u>		
i) Custody & Access Issues	<ul style="list-style-type: none"> Represent children in C/A cases (s.89-CJA) preparation of OG Reports (s.112-CJA) 	<ul style="list-style-type: none"> Represent mentally incompetent parent in custody/access cases (Rule 7.04(b), Rule 9A-Prov. Div. Rules, 8A-UFC Rules)
ii) Child Protection	<ul style="list-style-type: none"> Represent children and minor parents in protection proceedings (s.38 CFSA) Court empowered to make representation order where party is under mental disability (Rule 9A - Prov. Div. Rules) 	<ul style="list-style-type: none"> Represent mentally incompetent adults' interests in other family law matters, e.g. divorce actions, division of family property, support, separation agreements (FLA, s.54(3)(b), Rule 7.04(b) MHA and MIA - as committee)
iii) Other Family Law Issues	<ul style="list-style-type: none"> legal advice to minor parents and children over 7 whose consent to an adoption is required (s.137-CFSA) 	
2. <u>Other</u>		
i) Secure Treatment Admissions	<ul style="list-style-type: none"> Represents children admitted to secure treatment facilities before CFSRB (s.124 CFSA) and before the courts 	

Primary Legal Responsibilities		
A. Personal Rights	O.G.	P.T. / P.G.T.
ii) Mental Health Review Board	<ul style="list-style-type: none"> Represents psychiatric patients before the Mental Health Review Board with respect to issues relating to both capacity to consent to treatment and treatment (s.50(10) <u>Mental Health Act</u>) 	<ul style="list-style-type: none"> If O.G. is substitute decision maker for psychiatric patients, P.T., by protocol, will act as legal representative of last resort before Mental Health Review Board re: issues of capacity to consent to treatment and treatment
iii) New Consent and Capacity Review Board	<p>Note: This Board will be replaced by the Consent and Capacity Review Board.</p> <ul style="list-style-type: none"> O.G. to represent children admitted to secure treatment facility before Board where contesting finding that incapable with respect to treatment 	<ul style="list-style-type: none"> P.G.T. to ensure legal representation is provided upon referral by the Board
iv) <u>Substitute Decisions Act</u> (Court Appointment of Guardians)		<ul style="list-style-type: none"> P.G.T. to ensure legal representation is provided in proceedings under the Act where capacity is in issue if Court directs (s.3 - <u>SDA</u>) in addition to other responsibilities (see attached document entitled "Projected Litigation Requirements under New Legislation")
v) CICB	<ul style="list-style-type: none"> Represents children as last resort before C.I.C.B. (s.81 <u>CFSA</u>) 	<ul style="list-style-type: none"> P.T. applies for <u>MIA</u>, <u>MHA</u> clients <p>Note: s.21(3) which provides that an award may be paid to P.T. where person is of unsound mind or is incapable of managing his or her affairs</p>

Primary Legal Responsibilities		
	O.G.	P.T. / P.G.T.
B. Property Rights		
1. <u>General Client Legal Services</u>		<ul style="list-style-type: none"> P.T. has same powers as client under MHA and provides all legal services to these clients and MIA clients P.T. does full range of legal work relating to estates of mentally incompetent persons
2. <u>General Civil Litigation</u>		
i) Client Representation in Civil Actions	<ul style="list-style-type: none"> Rule 7.04(a) - O.G. to represent children where no other person "willing and able" to act (e.g. personal injury litigation) Rule 7.04(c) - either the O.G. or P.T. where is child who is mentally incompetent not so declared (normally the O.G.) 	<ul style="list-style-type: none"> Rule 7.04(b) - P.T. to represent mentally incompetent persons not so declared where no other person willing and able (all MHA clients) protocol where P.T. represents child if O.G. in conflict
ii) Approval of Settlements	<ul style="list-style-type: none"> Rule 7.08(5) - O.G. reviews proposed settlements involving minors where referred by the court (e.g. settlement of personal injury claims and claims under FLA for loss of support, care and guidance) 	<ul style="list-style-type: none"> in addition, the Office defends all legal actions brought against the P.T. Rule 7.08(5) - P.T. reviews proposed settlements referred by the court involving mentally incompetent persons where some other person is acting as litigation guardian or committee of the estate Rule 7.08(4) - P.T. brings motion for approval of settlement on behalf of clients (MIA, MHA and litigation guardian clients)

Primary Legal Responsibilities		
B. Property Rights	O.G.	P.T. / P.G.T.
iii) Removal or Substitution of Litigation - Guardian or Committee	<ul style="list-style-type: none"> Rule 7.06(2) - court may substitute O.G. where litigation guardian not acting in best interests 	<ul style="list-style-type: none"> Rule 7.06(2) - court may substitute P.T. where litigation guardian not acting in best interests
iv) Removal of Solicitor	<ul style="list-style-type: none"> Rule 15.04(3) - where solicitor for minor moves to remove him/herself from record must notify O.G. 	<ul style="list-style-type: none"> Rule 15.04(3)(b) - where solicitor for person under a disability (other than a minor) moves to remove him/herself from record must notify P.T.
v) Dismissal of Action for Delay	<ul style="list-style-type: none"> Rule 24.02 - notice of a motion to dismiss action for delay to be served on O.G. where plaintiff is under a disability unless P.T. is litigation guardian or committee 	<ul style="list-style-type: none"> Rule 24.02 - notice of motion to dismiss action for delay to be served on P.T. if litigation guardian or committee
3. <u>Estates and Trusts</u>		
i) Passing of accounts (audit) of executors, administrators, trustees under a will or inter vivos trust, and guardians of minors' property	<ul style="list-style-type: none"> <u>Estates Act</u> (s.49(6)) - notice to be served on O.G. where interest held by minor or person of unsound mind (non-psychiatric patient) 	<ul style="list-style-type: none"> <u>Estates Act</u> (s.49(7)) - notice to P.T. where interest held by psychiatric patient; (s.49(8)) - notice to P.T. where interest held by charity; (s.49(9)) - notice to P.T. where person has died intestate and person to whom administration granted is not next-of-kin

Primary Legal Responsibilities		
B. Property Rights	O.G.	P.T. / P.G.T.
	<ul style="list-style-type: none"> Rule 61 (Estates Court Rules) - notice to be served on O.G. where interest held by minor, mentally incompetent person, person declared incapable under MIA of managing their affairs or an absentee where no committee, or unborn and unascertained beneficiaries 	<ul style="list-style-type: none"> Rule 61 - [no mention of P.T.] Rule 16.02(1)(l) - (Rules of Civil Procedure) - documents to be served on P.T. where person is mentally incompetent or incapable of managing their affairs, not so declared; Rule 16.02(1)(i) - documents to be served on P.T. where person is an absentee <p><u>Note:</u> P.T. reviews all MIA applications under Rule 16.02(1)(l) and may appear as a friend of the court</p>
	<p><u>Note:</u> As a result of conflict between <u>Estates Act</u> (and its Rules) and Rules of Civil Procedure, O.G. & P.T. have entered into an informal protocol with respect to representing these clients' interests at passing of accounts proceedings. Further, if the O.G. and P.T. both have an interest and the interest is similar or the same (e.g. capital interest in residue), protocol is that Office with more dominant interest will protect both interests to avoid duplication</p>	<ul style="list-style-type: none"> <u>Mental Health Act</u> - s.70 - P.T. liable to pass accounts with respect to its trust administration responsibilities in the same manner as any other trustee

Primary Legal Responsibilities		
B. Property Rights	O.G.	P.T. / P.G.T.
ii) Will contestation (lack of testamentary capacity, undue influence, suspicious circumstances) and proof in solemn form	<ul style="list-style-type: none"> • Rule 7.03(2) - O.G. shall act as litigation guardian for a minor defendant/respondent in estate or trust proceeding • Rule 10.01(1) - O.G. often appointed to represent unborn and unascertained beneficiaries 	<ul style="list-style-type: none"> • Rule 7.04(b) - P.T. acts as litigation guardian for mentally incompetent persons not so declared; P.T. may represent mentally incompetent person so declared as committee of the estate (<u>Mental Health Act</u>, ss.56, 75) and absentees and <u>MIA</u> clients • Rule 10.01(1) - P.T. often appointed to represent unascertained beneficiaries • P.T. may apply if personal representative of estate
iii) Will interpretation	• same as above	• same as above
iv) Removal of Trustee	• same as above	• same as above
v) Variation of Trust	• same as above	• P.T. often substituted as trustee
vi) <u>S.L.R.A.</u> (actions for dependant's relief: where minor applying or where other party applying and minors are beneficiaries of the estate)	<ul style="list-style-type: none"> • same as above (and Rule 7.04 where minor is applicant) 	<ul style="list-style-type: none"> • same as above • P.T. may be initiating application for adult client or responding on behalf of adult interested in estate or as personal representative of estate
vii) <u>Powers of Attorney Act</u>		<ul style="list-style-type: none"> • P.T. can apply for accounting by donee on behalf of incapable person (s.9) • P.T. may be appointed as substitute donee (s.10)

Primary Legal Responsibilities		
B. Property Rights	O.G.	P.T. / P.G.T.
viii) Sale/Encumbrance of Real Property	<ul style="list-style-type: none"> • Rule 67.01 - notice to O.G. of proceeding to approve sale, mortgage, lease or other disposition of minor's property • <u>Estates Administration Act</u> (ss.15, 17, 22) - sale/lease of property where minor or mentally incompetent person has an interest requires consent of O.G. 	<ul style="list-style-type: none"> • <u>Estates Administration Act</u> - (s.17) - sale of property where psychiatric patient has an interest requires consent of P.T., where P.T. is committee • P.T. obtains order in council to sell property where P.T. administering deceased's estate (<u>Crown Administration of Estates Act</u>) • sale of client's property (s.63 <u>MHA</u>; <u>MIA</u>) • Rule 7.08 and <u>FLA</u> - sale or encumbrance of matrimonial home
ix) Lost Heir/Absentee	<ul style="list-style-type: none"> • Rule 61 (Estates Court Rules) - O.G. to represent absentee's interest, where no committee, in passing of accounts [Note: pursuant to informal protocol, P.T. represents these interests because of the provisions of Rule 7.01(1)(d)] 	<ul style="list-style-type: none"> • Rule 7.01(1)(d) - provides that proceeding on behalf of an absentee shall be commenced, continued or defended by P.T. as litigation guardian where committee has not been appointed

Primary Legal Responsibilities		
B. Property Rights	O.G.	P.T. / P.G.T.
		<ul style="list-style-type: none"> • <u>Absentee Act</u> - P.T. may apply to be appointed committee of absentee's estate • P.T. has obligation to identify intestate beneficiaries (<u>SLRA</u> and <u>Crown Administration of Estates Act</u>) • P.T. responds to applications for heirship references as personal representative of estate under <u>SLRA</u> Part II and Rule 55
4. <u>Insurance</u>	<ul style="list-style-type: none"> • O.G. represents minor's interests where dispute over disposition of insurance proceeds, e.g. change of beneficiary designation under life insurance eliminates their entitlement to the proceeds and questionable whether change of designation valid (Rule 7.04, 7.03(2)) • O.G. assists minors obtain no-fault death benefits entitled to under <u>Insurance Act</u> and ensures are paid into court 	
5. <u>Payment Into/Out of Court</u>	<ul style="list-style-type: none"> • monies owing to minors must be paid into court (e.g. <u>Insurance Act</u>, ss.220, 271; <u>Trustee Act</u>, s.36) • Rule 72.03(10) - O.G. may bring motion (or be notified of a motion) seeking order for payment out of court of monies being held for person under disability, unless P.T. is the committee 	<ul style="list-style-type: none"> • P.T. may pay monies owing to mentally incompetent persons into court (e.g. Rule 7.09; <u>Trustee Act</u>, s.36) • Rule 72.03(10) - P.T. may bring motion (or be notified of a motion) seeking order for payment out of court of monies being held for person under disability where P.T. is the committee (see also <u>Mental Health Act</u>, s.74)

Primary Legal Responsibilities		
		P.T. / P.G.T.
B. Property Rights	O.G.	
	<ul style="list-style-type: none"> Rule 72.03(14) - where order made for payment out of court for maintenance of a minor (fiats), obligation on O.G. to obtain cheques from Accountant and send to minor 	
6. <u>Other</u>		<ul style="list-style-type: none"> <u>Charities Accounting Act</u> - P.T. represents charitable interests in estates and trusts in litigation and passing of accounts; financial statements must be filed with P.T. <u>Charitable Gifts Act</u> - monitors bequests to charities <u>Religious Organizations' Lands Act</u> (ss.24, 25) - P.T. empowered to seek court determination concerning eligibility of religious organization to hold land
ii) <u>Cemeteries Act</u>		<ul style="list-style-type: none"> P.T. reviews accounts of cemetery trusts and may attend on passing of accounts
iii) <u>Dissolved Corporations</u>		<ul style="list-style-type: none"> <u>Business Corporations Act</u> - s.242 - notice of any proceeding against a corporation after its dissolution shall be served on P.T.; s.243 - assets forfeit to Crown <u>Loan and Trust Corporations Act</u> - s.16 - notice of any proceeding against a provincial trust corporation after its dissolution shall be served on P.T.
iv) <u>Escheats Act</u>		<ul style="list-style-type: none"> administers property that is forfeited or escheats to the Crown

APPENDIX I

CLIENT DEMOGRAPHICS OF PUBLIC GUARDIAN IN ALBERTA

GUARDIANSHIP (2)

Noble objectives

Missing for simplistic / hitz / pedantic

a) Legal limitations / framework

b) Very complex human situation

c) eg. non-intrusive - but 20 sections of the act ~~are~~ require us to be intrusive.

the issue will be not to mislead the client or families.

- must clarify expectations.

- maybe some of the legis. requirement aren't good but its time to test it.

try through policy to meet these principles but acknowledge our limitations.

delays can occur where we need more info. to avoid being sued.

\$ Admin: more humane. ~~x~~ we are like a trust company ^{appropriate property mgt}

what the client wants
↑ vs.

More humane admin.

- good idea.
- c) ??? clear protocols / manuals / policies
- immediate need for public education
- eg. pamphlet. - forms not ready
- 4-6 months

see p. 289
costly to administrate

look at Alberta

APPENDIX I

Client Demographics of Public Guardian in Alberta

The following statistics are dated March 31, 1993.

	Public Guardianship	Private Guardianship
Developmentally Disabled Adults	1,064	2,736
Psychiatric Disorders	298	411
Dual Diagnosis	28	65
Brian Trauma	110	780
Mental Impairment	203	3,061
Others	30	306

"Bring open with clients / the
but families aren't always
the good guys. betw
balance prur
with open &
delicate
not a simple

other jurisdictions is
is unclear if
enough de

Quebec - 300-
team - 10P

our ratio } 3 - 1400 files
staff

Aug 1/95 Judy Spinks

Call Willson MCT.
re: who to see
in England

CURRENT P.T. ①

Hugh Paisley
on Rick Finston
list.

* listen to the operational review *

- systemic problems.
- not enough emphasis on lack of resources.

when citing specific cases - must understand complexity before making sweeping statements.

eg. consider legal restraint operating in the file -

- there are numerous examples of negligence

↑
morale
workload.

- Systemic problems.
- out of date procedures
- different client profile

- "rights advice is negligible"

↑ not quite true.

↑ This is a policy issue. re: conflict of interest
trying to get people certified
looks like were trying to build
our business.

Be neutral ↔ rights advice.

Fiduciary/Trust Relationship - we see them daily
solution → reactive rather than proactive

General comment: objectivity of the criticism.

